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Vol. II

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1945

No. 75 21

CHAMPLIN REFINING COMPANY, APPELLANT,

vs.

THE UNITED STATES OF AMERICA, AND INTERSTATE COMMERCE COMMISSION

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF OKLAHOMA

FILED MAY 16, 1945.

SUPREME COURT OF THE UNITED STATES

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THE UNITED STATES OF AMERICA, AND INTERSTATE COMMERCE COMMISSION

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VOL. II

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[fol. 610] EXHIBIT 30

In connection with the construction of the pipe line in 1935, from Enid, Oklahoma, to Superior, Nebraska, an application for Excavation Permit was filed by the Cimarron Valley Pipe Line Company, with the State Department of Roads and Irrigation of Nebraska, in the form hereto attached, which application was approved and permit was granted, in the manner indicated by the form.

[fol. 611] Original to Applicant. Duplicate to District Engineer. Triplicate to Lincoln.

STATE OF NEBRASKA

Department of Roads & Irrigation

Bureau of Roads & Bridges

Application for Excavation Permit

Date —— —, 19—.
County ——.

To the State Department of Roads and Irrigation, Lincoln, Nebraska.

GENTLEMEN:

Permission is hereby requested —— (Describe fully nature of work). Said work being located on State Highway No. —, —— and —— Tenths Miles —— (Direction) from —— (Place, town or object), more specifically described as follows: ——. The excavation is for the purpose of——.

The applicant agrees that if granted a permit to perform the above described work that said work shall be under the supervision and direction of the State Department of Roads and Irrigation or its authorized representative. The applicant agrees to indemnify and hold harmless the State Department of Roads and Irrigation from any damages of any nature which may result to any person or property arising out of the performance or non-performance of the above described work. The applicant agrees that repair work or backfill will not be made unless an authorized representative of the State Department of Roads and Irrigation is present.

The applicant understands that the location, construction and maintenance of any conduits or pipe lines through, in, or over any State Highway is under the supervision of the State Department of Roads and Irrigation at all times. The applicant further understands that granting this permit the State Department of Roads and Irrigation waives none of its rights or powers to direct the relocation, change in elevation, removal or proper maintenance in the future [fol. 612] of any conduit or pipe laid within the right-of-way of the State Highway by virtue of this permit if granted.

Our check in the amount of twenty-five dollars ($25.00) made payable to the Department of Roads and Irrigation accompanies this application; this check is to be retained by the said Department as a fee to cover the expense incurred in connection with issuing this permit and the supervision and inspection of the work.

Backfilling and repair must be inspected as the work is done by an authorized representative of the Department of Roads and Irrigation. The Department of Roads and Irrigation will furnish inspection only upon Forty-Eight Hours' Notice.

Special arrangements must be made for more extensive work.

The Company to whom this permit is granted agrees to make such installation in accordance with the "Specifications for Installation of Pipe Lines on State Highway Right-of-Ways," copy of which is attached hereto.

This Company to whom this permit is granted assumes full liability for damage to the roadbed and right-of-way and agrees to restore the road proper and right-of-way including any shrubs, trees or other improvements thereon to its original condition in all respects. It is agreed that in case the Company receiving this permit fails to restore the road to its original condition, the Department of Roads and Irrigation shall have the authority to have the necessary work done and, on submittal of an itemized claim, the Company to whom this permit is issued agrees to pay said claim promptly.

(Signed) —— ——, by —— ——, Title ——, Address ——, ——. Application approved and permit granted by ——, —— (Title). Date Issued —— —, 19—.

[fol. 613] SPECIFICATIONS FOR INSTALLATION OF PIPE LINES ON STATE HIGHWAY RIGHT-OF-WAYS

These specifications govern the installation of pipe lines or conduits for the purpose of conveying natural gas, oil, water, cables, etc., through and across State Highway right-of-ways.

When an individual, public service corporation or municipality, their contractors or employees, deem it necessary and expedient to install a pipe line or conduit across any State Highway right-of-way, or temporary State highway right-of-way, they shall comply with the following clauses:

1. An application for permit must be filed with and approved by the State Department of Roads and Irrigation or its authorized agents before any part of the installation begins.

2. Forty-eight hours' notice must be given the State Department of Roads and Irrigation at the District Engineer's office in which District the installation takes place before starting any excavation or other work on the right-of-way.

3. Said installation shall be in accordance with attached plan showing cross section of highway and with these specifications or any supplements thereto.

4. Traffic must be kept moving during installation. If it is impossible to keep traffic moving over highway during operations, a suitable detour must be arranged, said detour to be approved by a representative of the Highway Department before operations begin. Detouring of traffic will be permitted only in extreme cases.

5. The company, corporation or municipality, or its contractors or employees, shall assume all liabilities for accidents to the public in general caused by negligence on their part, or to any other cause directly or indirectly connected with their work of installing their pipelines, conduits, etc., on the highway.

6. The State Department of Roads and Irrigation reserves the right to revoke any permission given any company, corporation or municipality if, in the opinion of the State Department of Roads and Irrigation, or its authorized representative, the terms of these specifications or any supplementary specifications are not being followed by the

company, corporation or municipality or its contractors or employees.

7. The outer casing used shall meet the minimum requirements for culvert pipe as prescribed in the Nebraska standard specifications for highway construction and must be inspected and accepted by the Nebraska Department of Roads and Irrigation.

8. In case the Highway is improved with a higher type surface than gravel the installation must be made by jacking pipe through road or by some other approved method which will not disturb the surface of the highway. In the event this is impossible the Department of Roads and Irrigation may grant special permission to trench across the highway, by removing permanent type surface, in which case the backfill must be maintained thirty days by the company making the excavation before the permanent type surface can be replaced at the company's expense.

[fol. 614] EXHIBIT 31

In connection with the extension of the pipe line by Champlin Refining Company in 1939-1940 from Superior, Nebraska to Rock Rapids, Iowa, applications in the form hereto attached were filed with the County Boards of the following counties:

Nuckolls County, Nebraska
Clay County, Nebraska
Fillmore County, Nebraska
York County, Nebraska
Polk County, Nebraska
Butler County, Nebraska
Platte County, Nebraska
Colfax County, Nebraska
Stanton County, Nebraska
Wayne County, Nebraska
Dixon County, Nebraska

and to the Board of County Commissioners of Union County, South Dakota.

[fol. 615] In the County of ——, State of ——.

In the Matter of the application of the Champlin Refining Company, for permission to construct, operate and maintain a pipe line along, under, over, through, upon and across certain of the highways of —— County, ——.

Application

To the Honorable County Board of —— County, State of ——:

Comes now the Champlin Refining Company, a corporation, duly organized and existing under and by virtue of the laws of the State of New Mexico, and authorized to do business in the State of —— and represents:

First: That the said Champlin Refining Company is engaged in the business of producing, transporting, refining, and marketing petroleum, gas, gasoline and petroleum products and now has in the process of construction a pipe line within the State of ——.

Second: That said company desires to obtain permission to construct its said pipe line along, under, over, through, upon, and across the following described highways in —— County, ——, to-wit:

according to attached plat.

[fol. 616] Third: That said pipe line is essential to the conduct of the business of the Champlin Refining Company, and will be constructed, operated and maintained under the supervision of the County Board of —— County, ——, and will be placed in such manner as not to interfere with or hinder the public in the use of said highway.

Wherefore, your petitioner prays that your Honorable Board make an order granting to the said Champlin Refining Company, its successors and assigns the privilege of constructing, operating and maintaining said pipe line along, under, over, through and across said public highways, as hereinbefore described in this petition.

Respectfully Submitted, Champlin Refining Company, by —— ——, Vice-President.

Attest: —— ——, Secretary.

[fol. 617] EXHIBIT 32

In connection with the extension in 1939-1940 by Champlin Refining Company from Superior, Nebraska to Rock Rapids, Iowa, orders were issued in the form hereto attached by the County Boards of the following named counties:

Clay County, Nebraska

Fillmore County, Nebraska, with a provision in addition to those contained in the attached form as follows:

> "Said pipe line to be laid not less than five (5) feet below surface of land when crossing or passing along, under, or through any highway. Whenever Fillmore County should desire to go below a depth of five (5) feet in the construction or maintenance of any highway, Champlin Refining Company agrees to deepen pipe line to necessary depth upon written notice, without cost to county."

York County, Nebraska
Polk County, Nebraska
Butler County, Nebraska
Platte County, Nebraska
Colfax County, Nebraska

Stanton County, Nebraska, with a provision in addition to those contained in the attached form as follows:

> "• • • provided however, that the permit herein granted said Champlin Refining Company is conditioned upon its assumption of all responsibility and liability for any damages which may be sustained by Stanton County or any persons whomsoever, which may result from the construction, maintenance, or operation of such pipe line."

Wayne County, Nebraska, with a provision in addition to those contained in the attached form as follows:

> "• • • it being expressly understood by the said Champlin Refining Company, that they and they alone, shall be responsible for all accidents caused by their negligence in the construction of said pipe line hereinbefore set out and the said Company shall be responsible for any negligence in the maintenance of said line under said road as set out in the application.

The said Company guarantees the said Wayne County, harmless, from all damages occasioned by the above construction or the failure to properly maintain said line."

Dixon County, Nebraska
Union County, South Dakota

[fol. 618] In the County of —— State of ——.

In the matter of the application of the Champlin Refining Company, for permission to construct, operate and maintain a pipe line along, under, over, through, upon and across certain of the highways in —— County.

Order

Now on this —— day of ——, 19— at a regular meeting of the County Board, of —— County ——, held by said Board according to law, comes the Champlin Refining Company, a corporation, duly organized and existing under and by virtue of the laws of the State of New Mexico, and authorized to do business in the State of ——, and presents to said Board its request in writing, setting forth that it is necessary for the purpose of carrying on its business of producing, transporting, refining, and marketing petroleum, gas, gasoline and petroleum products, that the said corporation construct, operate and maintain a pipe line along, under, over, through and across the highways described in its petition and in the plat thereto attached, as follows:

[fol. 619] This Board being fully advised in the premises, and having carefully considered the same, finds that it is necessary in the conduct of its business that the Champlin Refining Company construct, operate, and maintain the said pipe line along, under, over, through, upon and across the aforesaid highways of —— County ——.

It is therefore ordered that said petitioner, Champlin Refining Company, be and it is hereby granted permission to construct, operate and maintain the said pipe line along, under, over, through, upon and across the highways so described in its said petition and the plat thereto attached.

It is further ordered that said pipe line shall be maintained at the expense of the petitioner and in such manner

as not to interfere with the due and proper use of said highways by the public or with the repairs thereof.

It is further ordered that in no event shall —— County, ——, be responsible for any injury occasioned by the building of said pipe line along said highways, it being distinctly understood that said —— County, ——, shall be subject to no liabilities therefor.

—— —— Chair. of the County Board of —— County ——.

—— ——, County Clerk.

[fol. 620] EXHIBIT 33

In connection with the extension of the pipe line by Champlin Refining Company in 1939-1940, from Superior, Nebraska to Rock Rapids, Iowa, the County Board of Commissioners of Nuckolls County, Nebraska, issued an order on the 8th of November, 1939, in the form hereto attached, and

On the same 8th of November, 1939, the Champlin Refining Company filed its supplementary application in the form hereto attached, and

The Board of Commissioners of Nuckolls County, on December 4, 1939, issued its supplementary order in the form hereto attached.

[fol. 621] In the County of Nuckolls, State of Nebraska

Before the County Board of Commissioners

In the matter of the application of the Champlin Refining Company, for permission to construct, operate and maintain a pipe line in Nuckolls County.

Order

Now on this —— day of November, 1939, at a regular meeting of the County Board of Nuckolls County, Nebraska, held by said Board according to law, comes the Champlin Refining Company, a Corporation duly organized and existing under and by virtue of the laws of New Mexico and authorized to do business in the State of Nebraska, and presents to said Board its request in writing setting forth that it is necessary for the purpose of carrying on its business of producing, transporting, refining and marketing petroleum, gas, gasoline and pe-

troleum products that said Corporation construct, operate and maintain a pipe line along, under, over, through and across the highways described in its petition and in the plat thereto attached as follows, to-wit: A six inch Gasoline Line beginning at a point near the Southeast Corner of the Northeast Quarter of Section 25, Township 1 North, Range 7 West, and extending in a Northeasterly direction to a point approximately one-fourth mile East of the Northwest Corner of Section 2, Township 4 North, Range 5 West.

Hearing is had on said application, and this Board having carefully considered the same and being fully advised in the premises, finds that it is necessary for said Champlin Refining Company in the conduct of its business of producing, manufacturing and selling gas, gasoline, oil and other petroleum products, and of transporting its said products for sale, to construct, operate and maintain a six inch pipe line between the points hereinabove designated; that in constructing such pipe line, it will be necessary to cross with said line of existing highways that will intersect the course of said proposed pipe line, and that permission [fol. 622] ought to be granted to said corporation to construct its said pipe line across all such highways; but the Board finds that no right should be granted to said company to construct its said pipe line within and along any highway except to the extent reasonably necessary to cross said highway from side to side in the regular course of such pipe line; and that such crossing shall be affected only at such depth as will not interfere with the maintenance, repair and reconstruction of such highways.

It is, Therefore, Ordered by the County Board: That permission be granted and hereby is granted to said Champlin Refining Company to construct its proposed pipe line across all highways that intersect the course of said pipe line within Nuckolls County, but not to construct such pipe line along and within said highway except to the extent necessary to affect a crossing of the highway in the regular course of the pipe line. It is further Ordered, that the construction of such pipe line across such highways shall be done only at a depth and in a manner approved by the Board of County Commissioners or such agent as they shall appoint to inspect such construction; that such pipe line shall be placed at such depth as not to interfere in any manner with the maintenance, repair, grading or reconstruction of any highway; that ditches constructed for the placing of

such pipe line across any and all such highways shall be carefully filled in and tamped so as to leave said highway in good condition; that while said ditches are open, warning signs and warning lights shall be maintained by said company for the protection of the public; that said company shall after the completion of said pipe lines keep the ditches dug across said highways for the purpose of constructing said pipe line, carefully filled so that neither said highway nor the traveling public shall be damaged by reason thereof; and that the said company shall at all times save and keep the County of Nuckolls harmless and free from all claims for any injuries or damage that may be caused at any time by the construction and maintenance of said pipe line across the highways of said County, and this permission is granted only upon the condition that the County [fol. 623] of Nuckolls shall in no event be responsible or liable for any injury occasioned by the building of said pipe line across said highways or by the maintenance and repairing or failure to repair said pipe lines and the excavations therefor by said Champlin Refining Company.

Passed this 8th day of November, 1939.

——, ——, ——, County Commissioners. Attested by: ——, County Clerk.

[fol. 624] In the County of Nuckolls, State of Nebraska

In the matter of the application of the Champlin Refining Company, for permission to construct, operate and maintain a pipe line along, under, over, through, upon and across certain of the highways of Nuckolls County, Nebraska

Supplemental Application

To the Honorable County Board of Nuckolls County, State of Nebraska:

Comes now the Champlin Refining Company and represents that heretofore on the 8th day of November, 1939, your Honorable Board entered its order allowing this applicant to construct its gasoline pipe line cross certain of the highways in Nuckolls County, Nebraska.

That it has become necessary for this applicant to change the route of its said line according to the plat hereto attached, and that said pipe line as re-routed is essential to

the conduct of the business of the Champlin Refining Company, and will be constructed, operated and maintained under the supervision of the County Board of Nuckolls County, Nebraska, and will be placed in such a manner as not to interfere with or hinder the public in the use of said highways.

Wherefore, your petitioner prays that your Honorable Board make an order granting to the said Champlin Refining Company, its successors and assigns, the privilege of constructing, operating and maintaining said pipe line along, under, over, through and across said public highways, as shown on the plat hereto attached.

Respectfully Submitted, Champlin Refining Company, By ——, Vice-President. Attest: ——, Assistant Secretary.

[fol. 625] Before the Honorable Board of Commissioners of Nuckolls County, Nebraska

In the matter of the application of the Champlin Refining Company, for permission to construct, operate and maintain a pipe line along, under, over, through, upon and across certain of the highways in Nuckolls County.

Supplemental Order

Now on this 4th day of December, 1939, at a regular meeting of the County Board of Commissioners of Nuckolls County, Nebraska, held by said Board according to law, comes the Champlin Refining Company, a corporation, duly organized and existing under and by virtue of the laws of the State of New Mexico, and authorized to do business in the State of Nebraska, and presents to said Board its request in writing, setting forth that it has become necessary to change the route of the gasoline pipe line described in our order of November 8, 1939, and that it is essential for the purpose of carrying on its business of producing, transporting, refining, and marketing petroleum, gas, gasoline and petroleum products, that the said corporation construct, operate and maintain a pipe line along, under, over, through and across the highways described in its supplemental application and in the plat thereto attached.

This Board, being fully advised in the premises, and hav-

ing carefully considered the same, finds that it is necessary in the conduct of its business, that said company construct, operate and maintain the said pipe line along and under certain highways of Nuckolls County, Nebraska, to-wit: one half mile along and under the highway between the Northwest Quarter of Section 28 and the Northeast Quarter of Section 29, both in township 4, Range 5 in said County; and one half mile along and under the highway between the Southwest Quarter of Section 3 and the Southeast Quarter of Section 4, both in Township 1, Range 6, in said County. [fol. 626] The Board further finds that said construction should be subject to all the restrictions, as to depth and methods of construction and maintenance, as are set forth in the order of this Board dated November 8, 1939.

It is, Therefore, Considered and Ordered: That the order of this Board, dated November 8, 1939, be rescinded to the extent only that the said Champlin Refining Company shall have the right to construct the pipe line along and under the one mile of the highways of said County hereinbefore described.

It is further ordered that the construction and maintenance of said pipe line shall be subject to all the restrictions set forth in the order of this Board dated November 8, 1939, and that said pipe line shall be maintained at the expense of the petitioner, and in such manner as not to interfere with the due and proper use of said highways by the public or with the repairs thereof.

It is further ordered that in no event shall Nuckolls County, Nebraska, be responsible for any injury occasioned by the building of said pipe line along said highways, it being distinctly understood that said Nuckolls County, Nebraska, shall be subject to no liabilities therefor.

——, ——, ——, Commissioners. Attest: County Clerk.

[fol. 627] EXHIBIT 34

In connection with the extension of the pipe line by Champlin Refining Company from Superior, Nebraska to Rock Rapids, Iowa in 1939-1940, the Champlin Refining Company filed its application with the County Board of Cuming County, Nebraska, and the said County Board on

November 7, 1939, issued its order in the forms hereto attached.

In addition to the application, the Champlin Refining Company also filed a Surety Bond in the sum of $10,000, (copy of which is not available) as provided for in the last paragraph of the order of the County Board of Cuming County, a copy of which is attached hereto.

[fol. 628] IN THE COUNTY OF CUMING, STATE OF NEBRASKA

In the Matter of the Application of the CHAMPLIN REFINING COMPANY, for permission to construct, operate and maintain a pipe line along, under, over, through, upon and across certain of the highways of Cuming County, Nebraska

APPLICATION

To the Honorable County Board of Cuming County, State of Nebraska:

Comes now the Champlin Refining Company, a corporation, duly organized and existing under and by virtue of the laws of the State of New Mexico, and authorized to do business in the State of Nebraska and represents:

First: That the said Champlin Refining Company is engaged in the business of producing, transporting, refining, and marketing petroleum, gas, gasoline and petroleum products and now has in the process of construction a pipe line within the State of Nebraska.

Second: That said company desires to obtain permission to construct its said pipe line along, under, over, through, upon, and across the following described highways in Cuming County, Nebraska, to-wit:

6" Gasoline Line

Beginning at a point near the Southwest Corner of the Northwest Quarter of Section 31, Township 22 North, Range 4 East and extending in a Northeasterly direction to the Northeast Corner of Section 35, Township 24 North, Range 4 East; thence continuing to a point one-fourth mile East of the Northwest Corner of Section 6, Township 24 North, Range 5 East.

according to the attached plat.

Third: In the event that said Board of County Supervisors of said County of Cuming, State of Nebraska, grants permission to this petitioner to lay, construct, maintain and operate said pipe lines in, across, through and under said public highways, then said Champlin Refining Company, of Enid, Oklahoma, agrees as follows:

(a) The manner of constructing said pipe line in said public highway shall be in accordance with speci- [fol. 629] fications or in a manner approved by the Board of County Supervisors of Cuming County, Nebraska. Said pipe lines shall be laid at least 6 feet below the surface and, or shall be constructed so as not to interfere with the future improvements of said highways.

(b) Said Company shall save and keep harmless said County of Cuming and said Board of County Supervisors of Cuming County, from any and all liability whatsoever for injury or damages to any person or persons whomsoever and, or to any property whatsoever and, or to said public highways arising from the laying, constructing, operating and maintaining of said pipe line or pipe lines in, across, through and under said public highways and shall reimburse said County for any and all damages done to said public highways by such construction, operation and maintenance of said pipe lines.

(c) If at any time subsequent to the construction of said pipe lines, improvements in said highways necessitate a change of location or the removal of said pipe lines, said Company shall at its own expense, upon thirty (30) days notice in writing from said Board of County Supervisors, alter or change the position of said pipe line. If said Champlin Refining Company shall neglect, fail or refuse to make such change after such notice from said Board, then said change shall be made by said County and said Company shall reimburse said County for the cost and expense of such change.

(d) Said County of Cuming and the Board of County Supervisors thereof, shall not be liable for in-

jury or damage to said pipe lines due to the use of said public roads or any change or improvement thereof or on account of the negligence of any or all County Employees or any person or persons whomsoever.

Fourth: That said pipe line is essential to the conduct of the business of the Champlin Refining Company, and will be constructed, operated and maintained under the supervision of the County Board of Cuming County, Nebraska, and will be placed in such a manner as not to interfere with or hinder the public in the use of said highway.

Wherefore, your petitioner prays that your Honorable Board make an order granting to the said Champlin Refining Company, its successors and assigns the privilege of constructing, operating and maintaining said pipe line along, under, over, through and across said public highways, as hereinbefore described in this petition.

Respectfully Submitted, Champlin Refining Company. By —— ——, Vice-President.

Attest: —— ——, Secretary.

[fol. 630] In the County of Cuming, State of Nebraska

In the Matter of the Application of the Champlin Refining Company, for permission to construct, operate and maintain a pipe line along, under, over, through, upon and across certain of the highways in Cuming County.

Order

Now on this 7th day of November, 1939 at a regular meeting of the County Board, of Cuming County Nebraska, held by said Board according to law, comes the Champlin Refining Company, a corporation, duly organized and existing under and by virtue of the laws of the State of New Mexico, and authorized to do business in the State of Nebraska, and presents to said Board its request in writing, setting forth that it is necessary for the purpose of carrying on its business of producing, transporting, refining, and marketing petroleum, gas, gasoline and petroleum products, that the said corporation construct, operate, and maintain a pipe line along, under- over, through and across the

highways described in its petition and in the plat thereto attached, as follows:

6" Gasoline Line

Beginning at a point near the Southwest Corner of the Northwest Quarter of Section 31, Township 22 North, Range 4 East and extending in a Northeasterly direction to the Northeast Corner of Section 35, Township 24 North, Range 4 East; thence continuing to a point one-fourth mile East of the Northwest Corner of Section 6, Township 24 North, Range 5 East.

This Board being fully advised in the premises, and having carefully considered the same, finds that it is necessary in the conduct of its business that the Champlin Refining Company construct, operate, and maintain the said pipe line along, under, over, through, upon and across the aforesaid highways of Cuming County, Nebraska.

It is therefore ordered that said petitioner, Champlin Refining Company, be and it is hereby granted permission to construct, operate and maintain the said pipe line along, under, over, through, upon and across the highways so described in its said petition and the plat thereto attached.

It is further ordered that said pipe line shall be maintained at the expense of the petitioner, and in such manner as not to interfere with the due and proper use of said highways by the public or with the repairs thereof.

It is further ordered that Champlin Refining Company shall construct, lay, maintain, and operate said pipe lines in accordance with the conditions set forth in said application and in a manner approved by the Board of County Supervisors, and upon the further condition that said Company shall indemnify, save and hold harmless the County of Cuming and Board of County Supervisors of said County from any and all liability for damages arising out of the construction, operation and maintenance of said pipe lines and that said company shall reimburse said County for any and all damages to said highways caused by such construction, operation and/or maintenance of said pipe lines and upon the further condition that the Champlin Refining Company shall within (10) days hereafter, deposit with the County Clerk of Cuming County, a bond in the penal sum of Ten Thousand ($10,000.00) Dollars conditioned on

the faithful performance of the obligations imposed hereunder on said Company, and said bond shall remain in force for the term of ten years after date hereof.

——— ———, Chair. of the County Board of Cuming County, Nebraska.

——— ———, County Clerk.

[fol. 631] EXHIBIT 35

In connection with the extension of the pipe line in 1939-1940 by Champlin Refining Company, from Superior, Nebraska to Rock Rapids, Iowa, the Board of County Commissioners of Union County, South Dakota executed a Pipe Line Right-of-Way dated November 7, 1939, and a second Pipe Line Right-of-Way dated November 8, 1939, in the forms hereto attached.

[fol. 632] Pipeline Right-of-Way

In consideration of the sum of One and no/100 Dollars, receipt of which is hereby acknowledged and the further consideration of twenty-five cents per lineal rod of the route selected by the Grantee, to be paid Grantor or deposited or tendered to his credit in the Union County Bank of Elk Point, South Dakota, when this grant shall be used or occupied, were for ourselves, heirs, successors and assigns hereby grant unto Champlin Refining Company, a New Mexico corporation, the right to lay, maintain, operate, repair, replace, and remove a pipeline for the transportation of water, gas, gasoline, petroleum or its products over, through and across the following described lands in Union County of South Dakota, to-wit:

The North half (N½) of the Southwest Quarter (SW-1/4) of Section five (5), Township 90 North, Range 49 West, and A strip of land one rod wide and eighty rods long being the entire south side of the Northeast Quarter of the Northeast Quarter of Section 5, Township 91 North, Range 49 West, and Across and along portions of the main north and south highway lying between the West Half and the East Half of the Southeast Quarter of Section 5, Township 91 North, Range 49 West.

Together with the right of ingress and egress to and from the same, such right-of-way to be along such route as may be selected by the Grantee, said Grantor to fully use said premises except for the purposes hereinbefore granted. Grantee may at any time lay additional lines of pipe on said premises, upon payment of like consideration, subject to same conditions; Grantee to pay any damage to cultivated crops which may arise from laying or for entering premises for purpose of repairing lines. The pipeline shall be buried in such a manner that there will be thirty inches of coverage between the top of the pipe and the surface of the ground.

It is further understood that the Champlin Refining Company will install said pipeline in such a manner so as not to interfere with the highway, herein above described, nor interfere with the drainage of the ditch parallel and adjacent thereto; that said pipeline will be laid in the ditch, on the east side, of the highway herein above described.

To Have And To Hold, said easement unto Champlin Refining Company, its successors and assigns forever.

Witness our hands this seventh day of November, 1939.

Board of County Commissioners of Union County, South Dakota. By ——, Chairman. ——, ——.

Champlin Refining Company. By ——, Agent. Draft No. 3294.

State of South Dakota, County of Union ss:

On this seventh day of November in the year 1939, before me personally appeared —— known to me to be the same persons whose names are attached hereto and who executed the within instrument, and acknowledged to me that they executedl the same.

——, Notary Public. My Commission Expires: ——, 19——.

[fol. 633] Pipeline Right-of-Way

In consideration of the sum of One and no/100 Dollars, receipt of which is hereby acknowledged and the further consideration of twenty-five cents per lineal rod of the route selected by the Grantee, to be paid Grantor or deposited or tendered to his credit in the Union County Bank of Elk Point, South Dakota, when this grant shall be used

or occupied, we for ourselves, heirs, successors and assigns hereby grant unto Champlin Refining Company, a New Mexico corporation, the right to lay, maintain, operate, repair, replace, and remove a pipeline for the transportation of water, gas, gasoline, petroleum or its products over, through and across the following described lands in Union County, South Dakota, to-wit:

Across and along portions of the main north and south highway which lies between the East Half and the West Half of the Southeast Quarter of Section 29, Township 92 North, Range 49 West and that portion of said highway which lies between the East Half and the West Half of the Northeast Quarter of Section 32, Township 92 North, Range 49 West.

Together with the right of ingress and egress to and from the same, such right-of-way to be along such route as may be selected by the grantee, said Grantor to fully use said premises except for the purposes hereinbefore granted. Grantee may at any time lay additional lines of pipe on said premises, upon payment of like consideration, subject to same conditions; Grantee to pay any damage to crops which may arise from laying or entering premises for purpose of repairing lines. The pipeline shall be buried in such a manner that there will be thirty inches of coverage between the top of the pipe and the surface of the ground.

It is further understood that the Champlin Refining Company will install said pipeline in such a manner so as not to interfere with the highway, herein above described; nor interfere with the drainage of the witch parallel and adjacent thereto; that said pipeline will be laid in the ditch, on the east side of the highway herein-above described.

To Have and To Hold, said easement unto Champlin Refining Company, its successors and assigns forever.

Witness our hands this eighth day of November, 1939.

Board of County Commissioners of Union County, South Dakota. By ——, Chairman. ——, ——.

Champlin Refining Company. By ——, Agent. Draft No. 3295.

State of South Dakota, County of Union ss:

On this eighth day of November in the year 1939, before me personally appeared —— known to me to be the same persons whose names are attached hereto and who executed the within instrument, and acknowledged to me that they executed the same.

——, Notary Public. My Commission Expires: ——, 19——.

[fol. 634] EXHIBIT 36

In connection with the extension of the pipe line by Champlin Refining Company from Superior, Nebraska, to Rock Rapids, Iowa, an Application for Excavation Permit was filed with the Department of Roads and Irrigation, Bureau of Roads and Bridges, of the State of Nebraska, on October 7, 1939, which application was approved and permit granted (no formal document delivered) on October 7, 1939, in the form attached.

[fol. 635] Original to Applicant.
Duplicate to District Engineer.
Triplicate to Lincoln.

69-S

STATE OF NEBRASKA

Department of Roads and Irrigation

Bureau of Roads and Bridges

Application for Excavation Permit

Date ——, 19—,
County ——.

To the State Department of Roads and Irrigation, Lincoln, Nebraska

GENTLEMEN:

Permission is hereby requested —— (Describe fully nature of work). Said work being located on State Highway No. ——, and —— tenths miles —— (Direction) from —— (Place, town or object), more specifically described as follows: ——. The excavation is for the purpose of ——.

The applicant agrees that if granted a permit to perform the above described work that said work shall be under the supervision and direction of the State Department of Roads and Irrigation or its authorized representative. The applicant agrees to indemnify and hold harmless the State Department of Roads and Irrigation from any damages of any nature which may result to any person or property arising out of the performance or non-performance of the above described work. The applicant agrees that repair work or backfill will not be made unless an authorized representative of the State Department of Roads and Irrigation is present.

The applicant understands that the location, construction and maintenance of any conduits or pipe lines through, in, or over any State Highway is under the supervision of the State Department of Roads and Irrigation at all times. The applicant further understands that granting this permit the State Department of Roads and Irrigation waives none of its rights or powers to direct the relocation, change in elevation, removal or proper maintenance in the future of any conduit or pipe laid.

[fol. 636] Our check in the amount of five hundred and fifty dollars ($550.00) made payable to the Department of Roads and Irrigation accompanies this application; this check is to be retained by the said Department as a fee to cover the expense incurred in connection with issuing this permit and the supervision and inspection of the work.

Whenever it becomes necessary for the applicant to remove permanent type surface in order to make the installation, a certified check, made payable to the Department of Roads and Irrigation in an amount to be determined before the application is approved, must be furnished in addition to the $25.00 fee. The certified check to be retained as a guarantee to the Department that the permanent type surface will be replaced by the applicant in a satisfactory manner. After the replacement has been made by the applicant, the certified check will be returned. In the event replacement is not made in a satisfactory manner, the Department will proceed to have proper repairs made, retaining the amount to be used for making the repairs from the certified check.

Backfilling and repair must be inspected as the work is done by an authorized representative of the Department of

Roads and Irrigation. The Department of Roads and Irrigation will furnish inspection only upon FORTY-EIGHT HOURS' NOTICE.

Special arrangements must be made for more extensive work.

The Company to whom this permit is granted agrees to make such installation in accordance with the "Specifications for Installation of Pipe Lines on State Highway Right-of-Ways," copy of which is attached hereto.

The Company to whom this permit is granted assumes full liability for damage to the roadbed and right-of-way and agrees to restore the road proper and right-of-way including any shrubs, trees or other improvements thereon to its original condition in all respects. It is agreed that in case the Company receiving this permit fails to restore the road to its original condition, the Department of Roads and Irrigation shall have the authority to have the necessary work done and, on submittal of an itemized claim, the Company to whom this permit issued agrees to pay said claim promptly.

(Signed) ——. By ——. —— (Title). Application approved and permit granted by ——. ——(Title). Date issued ——, 19—.

[fol. 637] Specifications for Installation of Pipe Lines on State Highway Right-of-Ways

These specifications govern the installation of pipe lines or conduits for the purpose of conveying natural gas, oil, water, cables, etc., through and across state highway right-of-ways.

When an individual, public service corporation or municipality, their contractors or employees, deem it necessary and expedient to install a pipe line or conduit across any state highway right-of-way, or temporary state highway right-of-way, they shall comply with the following clauses:

1. An application for PERMIT must be filed with and approved by the State Department of Roads and Irrigation or its authorized agents before any part of the installation begins.

2. Forty-eight hours' notice must be given the State Department of Roads and Irrigation at the District Engineer's

office in which District the installation takes place before starting any excavation or other work on the right-of-way.

3. Said installation shall be in accordance with attached plan showing cross section of highway and with these specifications or any supplements thereto.

4. Traffic must be kept moving during installation. If it is impossible to keep traffic moving over highway during operations, a suitable detour must be arranged, said detour to be approved by a representative of the Highway Department before operations begin. Detouring of traffic will be permitted only in extreme cases.

5. The company, corporation or municipality, or its contractors or employees, shall assume all liabilities for accidents to the public in general caused by negligence on their part, or to any other cause directly or indirectly connected with their work of installing their pipe lines, conduits, etc., on the highway.

6. The State Department of Roads and Irrigation reserves the right to revoke any permission given any company, corporation or municipality if, in the opinion of the State Department of Roads and Irrigation, or its authorized representative, the terms of these specifications or any supplementary specifications are not being followed by the company, corporation or municipality or its contractors or employees.

7. The outer casing used shall meet the minimum requirements for culvert pipe as prescribed in the Nebraska standard specifications for highway construction and must be inspected and accepted by the Nebraska Department of Roads and Irrigation.

8. In case the Highway is improved with a higher type surface than gravel, the installation must be made by jacking pipe through road or by some other approved method which will not disturb the surface of the highway. In the event this is impossible the Department of Roads and Irrigation may grant special permission to trench across the highway, by removing permanent type surface, in which case the backfill must be maintained thirty days by the company making the excavation before the permanent type surface can be replaced at the company's expense. The applicant may in lieu of maintaining the backfill for thirty

days make such backfill by compacting with mechanical tamper, in which event permanent type surface may be replaced immediately.

[fol. 638] EXHIBIT 37

In connection with the extension of the pipe line by Champlin Refining Company in 1939-1940 from Superior, Nebraska to Rock Rapids, Iowa, the Champlin Refining Company addressed a letter to the State Highway Commission of Pierre, South Dakota, dated October 10, 1939; a reply to which was dated October 23, 1939, and the Champlin Refining Company addressed a second letter on November 6, 1939, the reply to which was dated November 8, 1939.

Copies of the four letters are attached hereto.

[fol. 639] October 10, 1939

State Highway Commission, Pierre, South Dakota.

GENTLEMEN:

Our company is contemplating the construction of a gasoline pipe line across Union County, South Dakota, which will apparently intersect State Highway No. 50, and perhaps one or two other state roads.

Will you kindly send us your specifications for laying the line under this highway, together with the outline of any procedure necessary to obtain the approval of your department, and such forms as may be required for this purpose.

If you have an official highway map of the state, we would like to have a copy mailed to us.

Thanking you in advance for your courtesy, we are.

Very truly yours, Champlin Refining Company, By ——. EGW:f

[fol. 640] South Dakota State Highway Commission

Pierre

October 23, 1939

Champlin Refining Company, Enid, Oklahoma.

Attention: E. G. Wilmoth

DEAR MR. WILMOTH:

We are in receipt of your letter of October 10 with respect to the matter of securing permission to cross certain

highways in South Dakota with the pipe line which you contemplate building in the southeastern part of South Dakota.

I wish to advise that the method of procedure in handling such a request is that after you have determined just what highways you will cross and at what point, if you will submit this information to us in a request, you will be granted this permission subject to the construction being handled in accordance with the requirement of the State Highway Commission.

These requirements are such that will affect:

The condition of the crossing is not damaged.

The surface of the highway is not impaired by tunneling beneath the surface.

We do not have any particular specification that covers this type of crossing.

We are mailing you herewith an official copy of the South Dakota Highway Map so you may be able to locate the various places on the map for the purpose of giving us this information.

Yours very truly, State Highway Commission. By: E. W. Meeker, State Highway Engineer. EWM: J Enc.

[fol. 641] November 6, 1939

State Highway Commission, Pierre, South Dakota.

GENTLEMEN:

This will acknowledge receipt of your letter of October 23, 1939, and we wish to advise that our pipe line will cross U. S. Highway No. 77 at a point 1236 feet Northwest of the intersection of the center line of Highway 77 with the East line of Section 29, Township 91 North, Range 49 West, Union County, South Dakota.

We are sending herewith a plat showing this intersection.

We agree to construct this highway crossing in accordance with your requirements as shown in your letter of October 23, 1939, and under the supervision of your engineer.

Will you kindly send us your permission, and greatly oblige.

The construction crew will be at this location in a few days and we would appreciate the courtesy greatly if we might have the permit at your earliest convenience.

Very truly yours, Champlin Refining Company. By ——. EGW:f Enc.

[fol. 642] South Dakota State Highway Commission

Pierre

November 8, 1939

Champlin Refining Company, E. G. Wilmoth, Enid, Oklahoma.

GENTLEMEN:

This will acknowledge receipt of your letter of November 6 submitting information which we asked in connection with your request for permission to cross U. S. Highway [illegible] in Union County with your pipe line.

This letter will grant you this permission in accordance with the requirements as were specified in my letter of October 23. Same being that this crossing shall be done by tunnelling in accordance with the requirements of the Engineering Department which will inspect this work.

This information is being passed to Mr. H. M. Sparks, District Engineer, at Mitchell, South Dakota, and you will please advise Mr. Sparks when you expect to start work so he may have an Engineer on the ground to give you the instructions in accordance with our requirements.

Yours very truly, State Highway Commission. By E. W. Meeker, State Highway Engineer. EWM:J

[fol. 643] EXHIBIT 38

In connection with the extension of the pipe line in 1939-1940 by Champlin Refining Company from Superior, Nebraska, to Rock Rapids, Iowa, Champlin Refining Company addressed a letter to, and received a permit from the War Department in the forms attached.

[fol. 644] October 6, 1939

Col. W. M. Hoge, District Engineer, War Department, 1709 Jackson Street, Omaha, Nebraska.

Dear Sir:

We request a permit for the construction of a 6-inch I. D. pipe line, with a telephone line attached, for the transportation of petroleum, gas, gasoline and other petroleum products under the Missouri River between Sioux City, Iowa and Yankton, South Dakota, at approximately 838.6 above the mouth of the Missouri River (1890 mileage).

This work is not within the corporate limits of a municipality.

Both the pipe line and telephone line will be constructed temporarily according to the attached plat. If at any time this pipe line and telephone line become an obstruction to navigation, we agree to re-lay these lines according to your requirements.

It is understood that if a navigation project is adopted above Sioux City, it will be necessary for us either to remove these lines entirely or to place them at least 20 feet below standard low water.

Very truly yours, Champlin Refining Company. By —— EGW:f

[fol. 645] War Department

Note.—It is to be understood that this instrument does not give any property rights either in real estate or material, or any exclusive privileges; and that it does not authorize any injury to private property or invasion of private rights, or any infringement of Federal, State, or local laws or regulations, nor does it obviate the necessity of obtaining State Assent to the work authorized. It Merely Expresses the Assent of the Federal Government So Far As Concerns the Public Rights of Navigation. (See Cummings v. Chicago, 188 U. S., 410.) 3-8360

Permit

United States Engineer Office, Omaha, Nebraska

November 2, 1939.

Champlin Refining Company, Enid, Oklahoma.

GENTLEMEN:

Referring to written request dated October 6, 1939, signed, "Champlin Refining Company, By E. G. Wilmoth," I have to inform you that, upon the recommendation of the Chief of Engineers, and under the provisions of Section 10 of the Act of Congress approved March 3, 1899, entitled "An act making appropriations for the construction, repair, and preservation of certain public works on rivers and harbors, and for other purposes," you are hereby authorized by the Secretary of War, to construct and maintain a submerged pipe-line crossing, consisting of one 6-inch diameter steel pipe line for the transportation of petroleum, gasoline, natural gas, or other petroleum products, and one submarine telephone cable attached to the pipe line; which crossing shall be marked by signs as specified by the District Engineer, across the Missouri River, at mile 838.6 above the mouth (1890 mileage), and approximately two miles north and one-half mile east of Ponca, Nebraska, in accordance with the plans shown in red on the drawing attached hereto, marked: "Application by Champlin Refining Co., Submarine Crossing, Missouri River at Mile 838.6 near Ponca, Nebr., October 6, 1939."

Subject to the following conditions:

[fol. 646] (a) That the work shall be subject to the supervision and approval of the District Engineer, Engineer Department at Large, in charge of the locality, who may temporarily suspend the work at any time, if in his judgment, the interests of navigation so require.

(b) That any material dredged in the prosecution of the work herein authorized shall be removed evenly, and no large refuse piles, ridges across the bed of the waterway, or deep holes that may have a tendency to cause injury to navigable channels or to the banks of the waterway shall be left. If any pipe, wire, or cable hereby authorized is

laid in a trench, the formation of permanent ridges across the bed of the waterway shall be avoided and the back filling shall be so done as not to increase the cost of future dredging for navigation. Any material to be deposited or dumped under this authorization, either in the waterway or on shore above highwater mark, shall be deposited or dumped at the locality shown on the drawing hereto attached, and, if so prescribed thereon, within or behind a good and substantial bulkhead or bulkheads, such as will prevent escape of the material into the waterway. If the material is to be deposited in the harbor of New York, or in its adjacent or tributary waters, or in Long Island Sound, a permit therefor must be previously obtained from the Supervisor of New York Harbor, Army Building, New York City.

(c) That there shall be no unreasonable interference with navigation by the work herein authorized.

(d) That if inspections or any other operations by the United States are necessary in the interests of navigation, all expenses connected therewith shall be borne by the permittee.

(e) That no attempt shall be made by the permittee or the owner to forbid the full and free use by the public of all navigable waters at or adjacent to the work or structure.

(f) That if future operations by the United States require an alteration in the position of the structure or work herein authorized, or if, in the opinion of the Secretary of War, it shall cause unreasonable obstruction to the free navigation of said water, the owner will be required, upon due notice from the Secretary of War, to remove or alter the structural work or obstructions caused thereby without expense to the United States, so as to render navigation reasonably free, easy, and unobstructed; and if, upon the expiration or revocation of this permit, the structure fill, excavation, or other modification of the watercourse hereby authorized shall not be completed, the owners shall, without expense to the United States, and to such extent and in such time and manner as the Secretary of War may require, remove all or any portion of the uncompleted structure or fill and restore to its former condition the navigable capacity of the watercourse. No claim shall be made

against the United States on account of any such removal or alteration.

(g) That the United States shall in no case be liable for any damage or injury to the structure or work herein authorized which may be caused by or result from future operations undertaken by the Government for the conservation or improvement of navigation, or for other purposes, and no claim or right to compensation shall accrue from any such damage.

(h) That if the display of lights and signals on any work hereby authorized is not otherwise provided by law, such lights and signals as may be prescribed by the U. S. Coast Guard shall be installed and maintained by and at the expense of the owner.

(i) That the permittee shall notify the said district engineer at what time the work will be commenced, and as far in advance of the time of commencement as the said district engineer may specify, and shall also notify him promptly, in writing, of the commencement of work, suspension of work, if for a period of more than one week, resumption of work, and its completion.

(j) That if the structure or work herein authorized is not completed on or before thirty-first (31st) day of December, 1942, this permit, if not previously revoked or specifically extended, shall cease and be null and void.

By authority of the Secretary of War:

W. M. Hoge, Lt. Col., Corps of Engineers, District Engineer.

War Department, O. C. of E. Form No. 96. Revised March 16, 1936.

9-14-39—3M—6289—67975
Form 582

(E Cook
Ec. 1, Rapids)

Permit No. 413

Lyon County

IOWA STATE HIGHWAY COMMISSION

Application for Permit to Construct Pipe Line on State Highway Right-of-Way

Cook your copies on in the mail
Ernest Dunn

Application of Champlin Refining Company

(corporation or partnership) incorporated under the laws of the

State of New Mexico with its principal place of business in

Enid, Oklahoma (name of city and state)

November 27 1939

Iowa State Highway Commission,
Ames, Iowa.

Gentlemen:

Permission is hereby requested to construct a 6" pipe line for the transportation (describe fully nature of work)

of gasoline and oil across primary roads not less than four feet below the bottom of road ditches. At all road crossings the 6" oil line will be encased in at least an 8" wrought iron casing which will be placed under the road after boring a 10" hole through the road grade. A minimum of 40 feet of casing will be used at each crossing.

(Plat showing location, size and approximate minimum depth of pipe line must be attached to application.)

Said work being located on Primary Road No. 27, Lyon County,

3 miles east (direction) from Alvord (place, town or object) more

specifically described as follows:

On North side of Sec. 2-95-46 - Road No. 27

The applicant agrees that if granted a permit to perform the above described work the following stipulations shall govern:

1. That all trenches constructed longitudinally along the road shall be placed not closer than ..... feet from the edge of the pavement where pavement has been constructed or not closer than ..... feet from the centerline of the highway on roads where pavement has not been constructed.

2. That if at any time subsequent to the placing of pipe line construction operations in the improvement of said highway include changes of alignment or contemplate making cuts which will expose or disturb said pipe line, or fills which will cover up pipe line, the applicant shall at its own expense and without cost to the state, upon order of the Commission, do such reconstruction work as may be necessary to conform to the new grades or alignment on the highway. Upon failure of applicant to comply with any such order promptly after receipt of same the State Highway Commission may cause the same to be done and applicant agrees to pay the cost thereof upon receipt of statement.

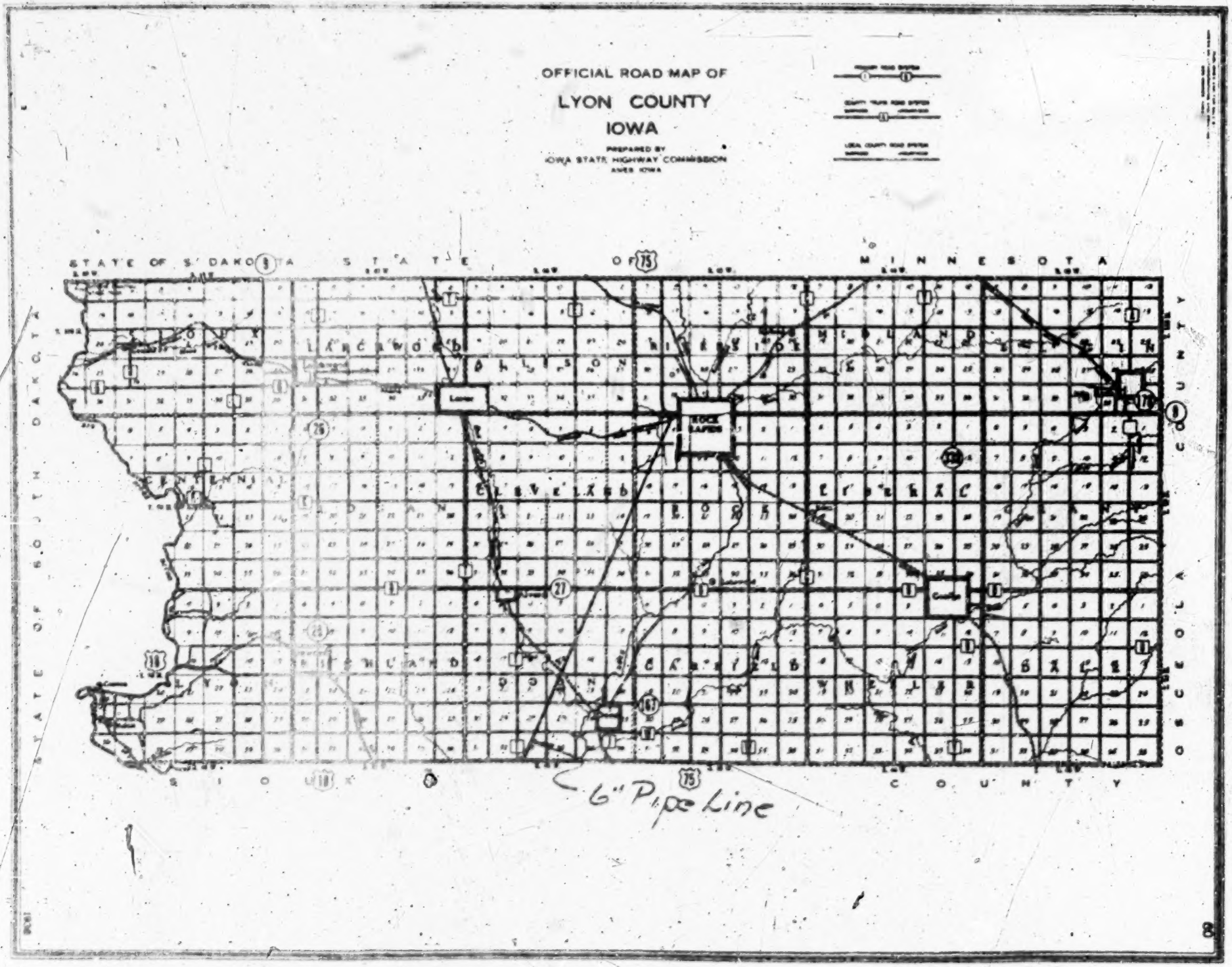
In the event any maintenance or construction work of the highway is likely to expose or interfere with the pipe line of the applicant the Commission will endeavor to give the applicant sufficient notice so that it may properly rearrange and protect its plant and will instruct contractors who are doing such highway work as to the location of the applicant's plant so that they may take reasonable precaution with respect to work interfering

OFFICIAL ROAD MAP OF

LYON COUNTY

IOWA

PREPARED BY
IOWA STATE HIGHWAY COMMISSION
AMES IOWA



with said plant. The state and State Highway Commission assume no responsibility for failure to give above notice.

3. That the state and the State Highway Commission assume no responsibility for damages to the applicant's property occasioned by any construction or maintenance operations on said highway subsequent to the building of the said pipe line.

4. That during the construction of said pipe line the applicant shall take all reasonable precaution to protect and safeguard the lives and property of the traveling public and adjacent property owners and shall save the state and the State Highway Commission harmless of any damage or losses that may be sustained by the traveling public or adjacent property owners on account of such construction operations.

5. That operations in the construction and maintenance of said pipe line shall be carried on in such a way as to not interfere with, or interrupt traffic on said highway.

6. That the applicant shall hold the state and the State Highway Commission harmless from any damage that may result to said highway because of the construction or maintenance of said pipe line and shall reimburse the state or the State Highway Commission for any expenditure that the state or the State Highway Commission may have to make on said highway on account of said applicant's pipe line having been constructed thereon.

7. That the applicant agrees to give the State Highway Commission forty-eight hours' notice of its intention to start construction on the highway right-of-way. Said notice shall be made in writing to the person whose name is shown below.

8. That the applicant agrees to construct pipe line crossings as follows: All pipe lines more than two (2) inches inside diameter which extend through the roadway shall be placed in casings of sufficient strength to properly carry the highway load so that the pipe may be removed from the casing for repair without disturbing the subgrade. On paved roads casings shall be placed through the subgrade by jacking or they shall be placed in a hole which has beeen bored through the subgrade slightly larger than the casing. Water pipes not encased shall be of copper or lead construction. If, in the opinion of the Highway Commission engineer in charge, on account of soil conditions jacking or boring is not feasible a tunnel may be driven through and the casing placed therein. In the case of roads which are not paved open trench construction may be used. All back-filling of tunnels and open trenches through the subgrade shall be carefully puddled or tamped in layers not to exceed six inches in depth. Back-filling of longitudinal trenches in the right-of-way shall be properly tamped to obviate settlement. All work shall be done in a thorough manner and left in a neat condition satisfactory to the Highway Commission engineer in charge.

9. That this permit is subject to any laws now in effect or any laws which may be hereafter enacted.

10. That this permit is subject to all the rules and regulations of the State Highway Commission and to revocation by the State Highway Commission at any time, when in the judgment of the Commission it is necessary in the improvement or maintenance of the highway or for other reasonable cause.

Recommended for approval:

Date November 27, 1939

District Engineer

Permit Granted NOV '39, 19

Signed Champlin Refining Company
Name of Company

By E. C. Duncan

Right-of-Way & Claim Agent
Title

Address Enid, Oklahoma

IOWA STATE HIGHWAY COMMISSION

By Randall Wilson
Chairman

Notice of construction to be sent to E. W. Dunn District Engineer,

Court House, Sioux City, Iowa
(address)

This permit for underground construction on right-of-way of primary road extension in ....., Iowa, shall not be effective unless and until approved by the Council and signed by the Clerk of ....., Iowa.

This is to certify hat this tentative permit ..... County, Permit No. ....., issued by the Iowa State Highway Commission, was approved by the Council of ....., Iowa, ..., 19 ....

Signed .....
City Clerk

(This application must be filed in quadruplicate with the State Highway Commission at Ames, Iowa, for each individual pipe line crossing or installation on primary highway right-of-way.)

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~~Dist. Eng. Corr.~~
~~Form 502~~

Permit No. 412
[redacted] County

IOWA STATE HIGHWAY COMMISSION

Application for Permit to Construct Pipe Line on State Highway Right-of-Way

Application of Champlin Refining Company

(corporation or partnership) incorporated under the laws of the State of New Mexico with its principal place of business in Enid, Oklahoma
(name of city and state)

November 27 1929

Iowa State Highway Commission,
Ames, Iowa.

Gentlemen:

Permission is hereby requested to construct a 6" pipe line for the transportation (describe fully nature of work)
of gasoline and oil across primary roads not less than four feet below the bottom of road ditches. At all road crossings the 6" oil line will be encased in at least an 8" wrought iron casing which will be placed under the road after boring a 10" hole through the road grade. A minimum of 30 feet of casing will be used at each crossing.

(Plat showing location, size and approximate minimum depth of pipe line must be attached to application.)

Said work being located on Primary Road No. 12, 10 & 18 [redacted] County,
miles East [redacted] Hawarden and Rock Valley more
(direction) (place, town or object)
specifically described as follows:

specifically described as follows:

On west side of Sec. 14-9N-4E - Road No. 12

At the NE Cor. Sec. 1-9N-4W - Road No. 10

On N. side Sec. 25-9N-4W - Road No. 18

The applicant agrees that if granted a permit to perform the above described work the following stipulations shall govern:

1. That all trenches constructed longitudinally along the road shall be placed not closer than ---- feet from the edge of the pavement where pavement has been constructed or not closer than ---- feet from the centerline of the highway on roads where pavement has not been constructed.

2. That if at any time subsequent to the placing of pipe line construction operations in the improvement of said highway include changes of alignment or contemplate making cuts which will expose or disturb said pipe line, or fills which will cover up pipe line, the applicant shall at its own expense and without cost to the state, upon order of the Commission, do such reconstruction work as may be necessary to conform to the new grades or alignment on the highway. Upon failure of applicant to comply with any such order promptly after receipt of same the State Highway Commission may cause the same to be done and applicant agrees to pay the cost thereof upon receipt of statement.

In the event any maintenance or construction work of the highway is likely to expose or interfere with the pipe line of the applicant the Commission will endeavor to give the applicant sufficient notice so that it may properly rearrange and protect its plant and will instruct contractors who are doing such highway work as to the location of the applicant's plant so that they may take reasonable precaution with respect to work interfering

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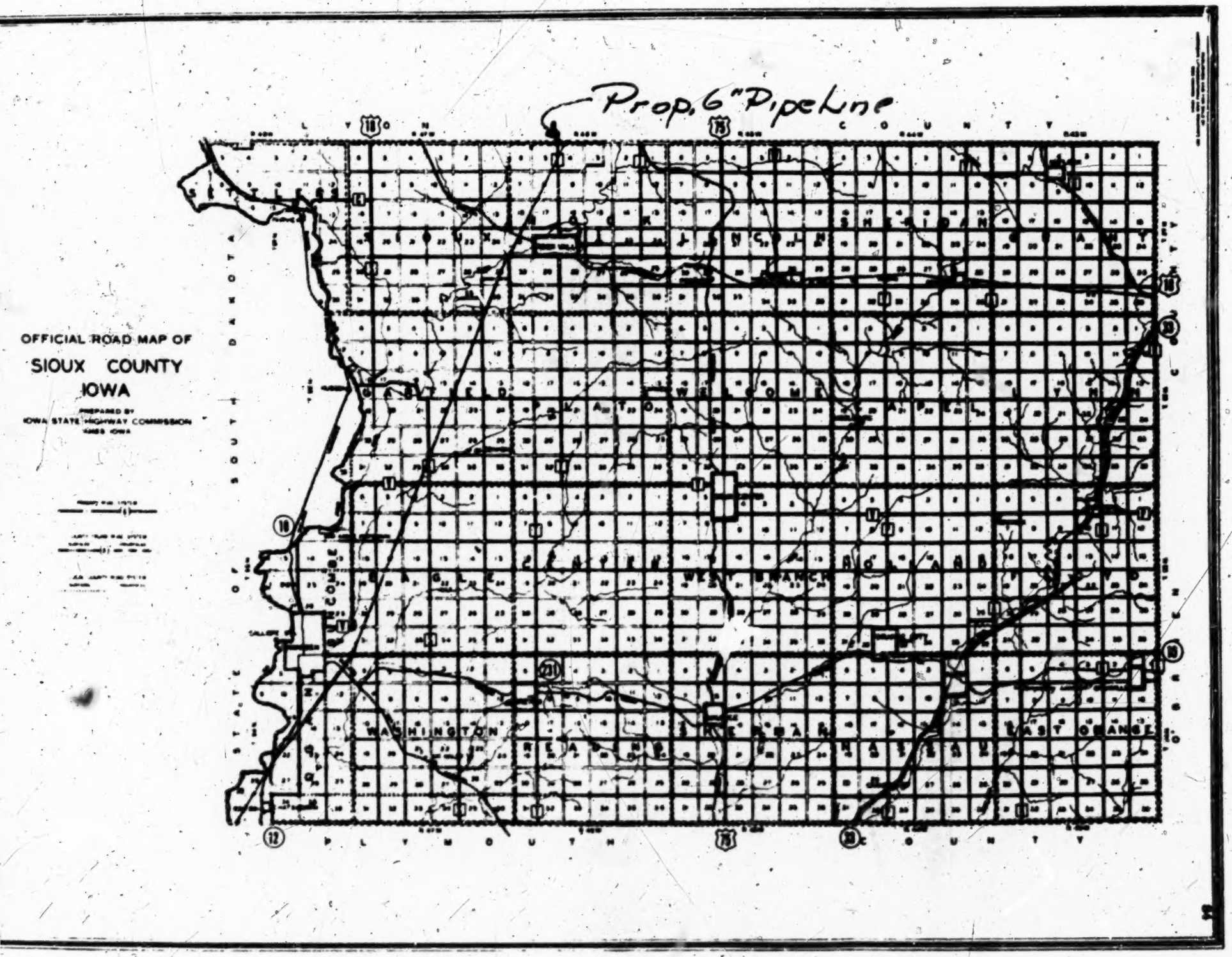
Prop. 6" Pipe Line
OFFICIAL ROAD MAP OF
SIOUX COUNTY
IOWA
PREPARED BY
IOWA STATE HIGHWAY COMMISSION
AMES IOWA
L Y O N C O U N T Y
O B R I E N C O U N T Y
P L Y M O U T H C O U N T Y
S I O U X C O U N T Y
S T A T E O F I O W A
W E L C O M E
W E S T B R A N C H
E A S T O R A N G E
W A S H I N G T O N
18
75
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with said plant. The state and the State Highway Commission assume no responsibility for failure to give above notice.

3. That the state and the State Highway Commission assume no responsibility for damages to the applicant's property occasioned by any construction or maintenance operations on said highway subsequent to the building of the said pipe line.

4. That during the construction of said pipe line the applicant shall take all reasonable precaution to protect and safeguard the lives and property of the traveling public and adjacent property owners and shall save the state and the State Highway Commission harmless of any damage or losses that may be sustained by the traveling public or adjacent property owners on account of such construction operations.

5. That operations in the construction and maintenance of said pipe line shall be carried on in such a way as to not interfere with, or interrupt traffic on said highway.

6. That the applicant shall hold the state and the State Highway Commission harmless from any damage that may result to said highway because of the construction or maintenance of said pipe line and shall reimburse the state or the State Highway Commission for any expenditure that the state or the State Highway Commission may have to make on said highway on account of said applicant's pipe line having been constructed thereon.

7. That the applicant agrees to give the State Highway Commission forty-eight hours' notice of its intention to start construction on the highway right-of-way. Said notice shall be made in writing to the person whose name is shown below.

8. That the applicant agrees to construct pipe line crossings as follows: All pipe lines more than two (2) inches inside diameter which extend through the roadway shall be placed in casings of sufficient strength to properly carry the highway load so that the pipe may be removed from the casing for repair without disturbing the subgrade. On paved roads casings shall be placed through the subgrade by jacking or they shall be placed in a hole which has been bored through the subgrade slightly larger than the casing. Water pipes not encased shall be of copper or lead construction. If, in the opinion of the Highway Commission engineer in charge, on account of soil conditions jacking or boring is not feasible a tunnel may be driven through and the casing placed therein. In the case of roads which are not paved open trench construction may be used. All back-filling of tunnels and open trenches through the subgrade shall be carefully puddled or tamped in layers not to exceed six inches in depth. Back-filling of longitudinal trenches in the right-of-way shall be properly tamped to obviate settlement. All work shall be done in a thorough manner and left in a neat condition satisfactory to the Highway Commission engineer in charge.

9. That this permit is subject to any laws now in effect or any laws which may be hereafter enacted.

10. That this permit is subject to all the rules and regulations of the State Highway Commission and to revocation by the State Highway Commission at any time, when in the judgment of the Commission it is necessary in the improvement or maintenance of the highway or for other reasonable cause.

Recommended for approval:

Date November 27, 1939

District Engineer

Permit Granted NOV 28 1939, 19

Signed Champlin Refining Company
Name of Company

By E E Duncan

Right-of-Way & Claim Agent
Title

Address Enid, Oklahoma

IOWA STATE HIGHWAY COMMISSION

By Randall Milson
Chairman

Notice of construction to be sent to E. H. Dunn District Engineer,

Court House, Sioux City, Iowa
(address)

This permit for underground construction on right-of-way of primary road extension in ..... Iowa, shall not be effective unless and until approved by the Council and signed by the Clerk of ..... , Iowa.

This is to certify that this tentative permit ..... County, Permit No. ..... issued by the Iowa State Highway Commission, was approved by the Council of ..... , Iowa, ... , 19 ..

Signed .....
City Clerk

(This application must be filed in quadruplicate with the State Highway Commission at Ames, Iowa, for each individual pipe line crossing or installation on primary.

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[fol. 653] EXHIBIT 41

STATE OF IOWA,
Office of the Iowa State,
Commerce Commission:

I, Geo. L. McCaughan, Secretary of the Iowa State Commerce Commission, certify that attached hereto is a true and correct copy of the application of the Champlin Refining Company, a New Mexico corporation, Enid, Oklahoma, which application was filed with the Iowa State Commerce Commission on October 2, 1939, petitioning for a permit to construct, maintain and operate a pipe line for the transmission or transportation of petroleum products in and through Plymouth, Sioux and Lyon Counties, Iowa, said application being composed of the following parts:

(1) a copy of petition form properly filled out, signed and witnessed.

(2) a copy of Exhibit "A", pages 1 and 2, being a description of route over which pipe line of Champlin Refining Company proposes to pass.

(Exhibit "B" consisting of a photostatic copy of a portion of the map of Plymouth County, Iowa, a photostatic copy of a portion of the map of Sioux County, Iowa, and a photostatic copy of the map of Lyon County, Iowa, is omitted from this copy of the application.)

(3) a copy of Exhibit "C" consisting of two pages, page 1 being a printed form of this Commission containing answers to questions thereon, and page 2 being a list of answers to question 6 (b) of page 1.

(4) Exhibit "D" composed of copies of pages 1 to 14, inclusive, being a schedule showing the property [fol. 654] of the Champlin Refining Company located in the State of Iowa, other than pipe lines.

(5) Exhibit "E" being a copy of a statement relating to said pipe line not extending longitudinally on public or railroad right of way.

(6) Exhibit "F" being a copy of statement to the effect that said line will not pass within 300' of occu-

pied residences unless the consent of the property owner is obtained.

Docket P-105

In Testimony Whereof, witness my signature and seal of the Commission at Des Moines, Iowa, this 14th day of October, 1941.

Geo. L. McCaughan, Secretary. (Seal.)

(Here follows 1 photolithograph, side folio 655)

Ia. C.C. 174

IN THE MATTER OF THE PET N OF

CHAMPLIN REFINING COMPANY, a New Mexico corporation,

BEFORE THE IOWA STATE COMMERCE COMMISSION FOR A PERMIT TO CONSTRUCT, PURCHASE

AND MAINTAIN PIPE LINE OR LINES IN

Lyon, Sioux and Plymouth

COUNTIES, IOWA.

PETITION

TO THE IOWA STATE COMMERCE COMMISSION:

(1) Comes now the Champlin Refining Company, a New Mexico corporation, authorized to transact business in the State of Iowa, whose principal office or place of business is Enid, Oklahoma and post office address is P. O. Drawer 1078, and hereby petitions the Iowa State Commerce Commission, under the provisions of Chapter 383-F2, Code of Iowa, 1935, for a permit to construct, maintain and operate a pipe line for the transmission or transportation of petroleum products, and for such purpose to lay pipes, place pumps, pressure apparatus or other stations, devices or equipment used in or upon such line which are necessary for transmitting petroleum products, under, along, over or across any public and/or private highways, grounds, waters or streams of any kind of this State, or the lands of any person, company or corporation and to acquire the necessary interests in real estate for such purposes.

(2) Your petitioner hereby prays that a permit be issued, as provided by law, granting to your petitioner, its successors and assigns, the right to construct, operate and maintain pipes, pumps, pressure apparatus or other stations or equipment for the purpose of transmitting such product, to be located in accordance with description as contained in Exhibit "A", which is attached hereto and made a part hereof.

(3) Attached hereto, and made a part of this petition and designated as Exhibit "B", are two (2) blue print copies of map on which is shown the starting point, route and terminus of the proposed line or lines; also all public highways and railroad right-of-way; the location of all streams; the location of equipment used in operation of lines, and other pertinent information.

(4) Attached hereto and made a part of this petition and designated as Exhibit "C" is a set of engineering specifications covering the engineering features, materials and manner of construction which will enter into the construction of the proposed line or lines; also the approximate length of line; diameter of pipe used; the name, address and location of each railroad to be crossed; the location of primary highways, etc.

(5) Attached hereto and made a part hereof and designated as "Exhibit "D" is showing made that the applicant complies with Section 8338-f40, Chapter 383-F2, Code of Iowa, 1935, in one of the four manners prescribed in Rule No. 6, Exhibit "D" of Rules and Regulations of your Commission.

(6) Attached hereto and made a part of this petition and designated as Exhibit "E" are copies of consents covering all public highways and railroads where a pipe line is constructed longitudinally on, over or under such property, or at other than an approximate right angle to track or highway.

(7) Attached hereto and made a part hereof and designated as Exhibit "F" is statement of number of occupied residences proposed to be passed with pipe line at a distance of less than 300 feet therefrom and this applicant agrees that consents of property owners will be obtained and filed as prescribed by the rules and regulations of your Commission.

(8) The maximum capacity of said line or lines will be 7,000 bbls daily W.C.F. at 750 lbs./sq. in.

(9) The proposed pipe line will be used for the purpose of transmitting petroleum products at the maximum pressure of 750 lbs./sq. in.; a normal inlet operating pressure of 750 lbs./sq. in.; an outlet pressure of 0 to 15 lbs./sq. in.; and will be approximately 42 miles of 6 5/8 inch O.D.

(10) The construction of the proposed line will conform to minimum requirements of the rules of the Iowa State Commerce Commission which are now in effect or may be hereafter adopted and all requirements of Chapter 383-F2, Code of Iowa, 1935.

(11) Attached is a deposit in the amount of Twenty-five Dollars ($25.00) to pay costs and expense of proceedings, exclusive of cost of publishing notices of hearing.

(12) Your petitioner respectfully prays that the Iowa State Commerce Commission fix a time and place for hearing in the matter of this petition for permit and requests that proper notice be prepared for publication once a week for two consecutive weeks in some newspaper of general circulation of Lyon, Sioux and Plymouth Counties, Iowa.

CHAMPLIN REFINING COMPANY

By E. G. Wilmoth

Representative

Dated at Enid, Oklahoma this 30th day of September, A. D. 1939

STATE OF OKLAHOMA }
COUNTY OF GARFIELD } ss.

I, E. G. Wilmoth being first duly sworn, on oath state that I am Pipe Line Superintendent of the applicant above named and that I have full authority to execute the foregoing instrument and that I have read the foregoing petition and know the contents thereof, and that statements therein contained are true and correct as I verily believe.

E. G. Wilmoth

Subscribed and sworn to before me by the said E. G. Wilmoth

this 30th day of September, A. D. 1939

Lyle Tenison

Notary Public

(SEAL) My commission expires on Jan 6, 1942

FILED
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[fol. 656] EXHIBIT 42

State of Iowa

Office of the Iowa State Commerce Commission

In the Matter of the Issuance of Permit to Champlin Refining Company, Enid, Oklahoma

For the Construction, Operation and Maintenance of a Pipe Line

Permanent Permit No. 126

Rock Rapids Lateral

The Champlin Refining Company, Enid, Oklahoma, authorized to transact business in this state, having complied with the requirements of Chapter 383.3, Code of Iowa, 1939, was issued Temporary Permit No. 64 dated October 24, 1939, for the construction, operation and maintenance of a pipe line for the transportation of petroleum products in and through Plymouth, Sioux & Lyon Counties, Iowa, said pipe line being six (6) inches in diameter and to operate at a maximum pressure of seven hundred fifty (750) pounds per square inch.

Pursuant to the order of this Commission and to the provisions of Chapter 383.3, Code of Iowa, 1939, Temporary Permit No. 64 is now cancelled and revoked, and this permit is hereby issued and permission and authority thereunder are hereby granted unto said Champlin Refining Company, Enid, Oklahoma, to construct, operate and maintain a pipe line for the transmitting or transportation of petroleum products and for such purpose to construct, reconstruct, repair or locate its pipes, pumps, pres-[fols. 657-662] sure apparatus or other stations, devices or equipment used in and upon such line which are necessary for the transmitting or transportation of the above products over, along and across the public and/or private highways, grounds, waters and streams of any kind of this state, or the lands of any person, company or corporation and to acquire the necessary interests in real estate for such purposes, on and along the route particularly described, to-wit:

• • • • • • •

[fol. 663] This permit is granted and issued for a period of twenty-five years from and after the date hereof unless sooner revoked, modified or terminated as provided by law, and it is expressly stated herein that this permit shall be subject to and governed by all of the provisions, conditions and requirements of Chapter 383.3, Code of Iowa, 1939, and by all of the provisions, rules and regulations of the Iowa State Commerce Commission as now exist or may be hereafter ordered or required by the said Iowa State Commerce Commission, insofar as the same may be applicable.

During the period of time this permit is in force, the said company is vested with the right of eminent domain to such extent as may be necessary and as prescribed and approved by the said Iowa State Commerce Commission, not exceeding seventy-five (75) feet in width for right of way and not exceeding one (1) acre in any one location in addition to the right of way, for the location of pumps, or other station, pressure apparatus or equipment to carry out the purposes of said permit; and in the exercise of such right of eminent domain the same proceeding shall be taken as provided for taking private property for works of internal improvements.

Provided, however, that no pipe line shall be constructed [fol. 664] longitudinally on, over or under any public highway or railroad right of way, or at other than an approximate right angle to the track or to the highway, without the consent of the proper public authority, or the railroad company's consent, nor shall it be considered that any provision of Chapter 383.3, Code of Iowa, 1939, or of this permit shall give the right of condemnation or eminent domain for such purposes.

It is further provided and as a condition of this permit that the said Iowa State Commerce Commission retains jurisdiction and may at any time hereafter and during the period of this permit make such further orders and regulations as may be necessary, and as said Commission may be authorized by law.

Signed and sealed as provided by law on March 15, 1940.

Iowa State Commerce Commission, by Barr Keshlear, Chairman.

Attest: Geo. L. McCaughan, Secretary.

[fol. 665] EXHIBIT 43

October 7, 1941.

Iowa State Commerce Commission, Des Moines, Iowa.

Attention: Barr Keshlear, Chairman

GENTLEMEN:

The Champlin Refining Company are returning, herewith, Permanent Permit No. 126, issued by your Commission under date of March 15, 1940, for the reason that the said Permit, on page 8 thereof, purports to vest the Champlin Refining Company with the right of eminent domain.

The Champiin Refining Company shows to the Commission that it is not a common carrier and does not hold itself out as a common carrier, and does not use the said pipeline for the purpose of transporting merchandise for the public.

The Company further shows to the Commission that it has never exercised or attempted to exercise the right of eminent domain in connection with the construction or operation of the said pipeline for which this permanent permit was issued. That the Company has serious doubt as to whether, not being a common carrier, this company would have any legal right to exercise the right of eminent domain.

The Company, therefore, respectfully requests that the last paragraph on page 8 of said permit, being the paragraph with respect to the right of eminent domain, be omitted, and respectfully asks that a new permit be issued, omitting any reference to the question of eminent domain.

Respectfully submitted, Champlin Refining Company of Enid, Oklahoma, by —— ——, Its Attorneys.

WPB:L.

[fol. 666] EXHIBIT 44

STATE OF IOWA,
Office of the Iowa State
Commerce Commission:

I, Geo. L. McCaughan, Secretary of the Iowa State Commerce Commission, certify that attached hereto is a true and correct copy of Permanent Permit No. 157 granted by the Iowa State Commerce Commission for the

construction, operation and maintenance of a pipe line for the transportation of petroleum products in and through Plymouth, Sioux and Lyon Counties, Iowa, to the Champlin Refining Company, Enid, Oklahoma, said permit bearing date of October 13, 1941.

Docket No. P-105. Permanent Permit No. 157.

In Testimony Whereof witness my signature and seal of the Commission at Des Moines, Iowa, this 14th day of October, 1941.

Geo. L. McCaughan, Secretary.

[fol. 667] STATE OF IOWA

Office of the Iowa State Commerce Commission

In the Matter of the Issuance of Permit to CHAMPLIN REFINING COMPANY, ENID, OKLAHOMA

For the Construction, Operation and Maintenance of a Pipe Line

Permanent Permit No. 157

Rock Rapids Lateral

The Champlin Refining Company, Enid, Oklahoma, authorized to transact business in this state, having complied with the requirements of Chapter 383.3, Code of Iowa, 1939, was issued Temporary Permit No. 64, dated October 24, 1939, for the construction, operation and maintenance of a pipe line for the transportation of petroleum products in and through Plymouth, Sioux and Lyon Counties, Iowa, said pipe line being six (6) inches in diameter and to operate at a maximum pressure of seven hundred fifty (750) pounds per square inch.

Pursuant to the order of this Commission and to the provisions of Chapter 383.3, Code of Iowa, 1939, Temporary Permit No. 64 was cancelled and revoked, and Permanent Permit No. 126, dated March 15, 1940, was issued to said company, which permit contained the right of eminent domain. We are advised that said company does not desire said right. Said Permanent Permit No. 126 is now cancelled and revoked and this permit is hereby issued and permission and authority thereunder are hereby granted unto said

Champlin Refining Company, Enid, Oklahoma, to construct, operate and maintain a pipe line for the transmitting or transportation of petroleum products and for such purpose to construct, reconstruct, repair or locate its pipes, [fols. 668-673] pumps, pressure apparatus or other stations, devices or equipment used in and upon such line which are necessary for the transmitting or transportation of the above products over, along and across the public and/or private highways, grounds, waters and streams of any kind of this state, or the lands of any person, company or corporation and to acquire the necessary interests in real estate for such purposes, on and along the route particularly described to-wit:

* * * * * * *

[fol. 674] This permit is granted and issued for a period of twenty-five years from and after the date hereof unless sooner revoked, modified or terminated as provided by law, and it is expressly stated herein that this permit shall be subject to and governed by all of the provisions, conditions and requirements of Chapter 383.3, Code of Iowa, 1939, and by all of the provisions, rules and regulations of the Iowa State Commerce Commission as now exist or may be hereafter ordered or required by the said Iowa State Commerce Commission, insofar as the same may be applicable.

No pipe line shall be constructed longitudinally on, over or under any public highway or railroad right of way, or at other than an approximate right angle to the track or to the highway, without the consent of the proper public au- [fol. 675] thority, or the railroad company's consent, nor shall it be considered that any provision of Chapter 383.3, Code of Iowa, 1939, or of this permit shall give the right of condemnation or eminent domain for such purposes.

It is further provided and as a condition of this permit that the said Iowa State Commerce Commission retains jurisdiction and may at any time hereafter and during the period of this permit make such further orders and regulations as may be necessary, and as said Commission may be authorized by law.

Signed and sealed as provided by law on October 13, 1941.

Iowa State Commerce Commission, by Barr Keshlear, Chairman.

Attest: Geo. L. McCaughan, Secretary.

[fol. 676] EXHIBIT 45

Valuation Order No. 26—Revised

Instructions to Govern the Preparation and Filing by Common Carriers by Pipe Line of Maps, Charts and Schedules as Prescribed by the Interstate Commerce Commission, in Accordance With Section 19a of the Interstate Commerce Act, Revised Issue. Effective December 31, 1934.

[fol. 677] Interstate Commerce Commission, Washington, D. C.

Order

At a General Session of the Interstate Commerce Commission, Division 1, held at its office in Washington, D. C., on the 31st day of December, A. D. 1934.

The subject of specifications for maps, charts, and schedules to be prescribed for and applied by common carriers by pipe lines being under consideration:

It is ordered, That the specifications for maps, charts, and schedules, Section A to F, inclusive, a copy of which is filed with and made a part of this order, are hereby approved and adopted.

It is further ordered, That the said specifications for maps, charts and schedules be, and the same hereby are, prescribed for the use of all pipe line companies subject to the provisions of the act to regulate commerce, as amended, in the preparation of all maps, charts, and schedules which shall be required to be prepared for or filed with this Commission in accordance with section 19a of the act to regulate commerce; that each and every company and each and every receiver or operating trustee of any such company be required to prepare and furnish to the Commission all maps, charts, and schedules in conformity herewith, and that a copy of said specifications be sent to each and every such company and to each and every receiver or operating trustee of any such company.

It is further ordered, That every pipe line company and each and every receiver or operating trustee of any such company shall prepare and furnish to the Commission in accordance with such specifications complete maps, charts, and schedules of its property as it exists on the date assigned for the valuation of that property within 60 days

after such date of valuation; provided, however, that no such company shall be required to prepare or file any map, chart, or schedule within less than 60 days from the receipt of written notice from the Director of the Bureau of Valuation, of this Commission, stating the date of valuation for such company.

It is further ordered, That Valuation Order No. 26, effective September 10, 1934, be, and it is hereby, superseded and cancelled as of the effective date of this order.

By the Commission, Division 1.

George B. McGinty, Secretary. (Seal.)

[fol. 678] Section A—Specifications for the Preparation of Maps.

I. General

1. Intent.

In order that the Interstate Commerce Commission may investigate, ascertain, report, and record the value of property of common carriers by pipe lines as it now exists and as it hereafter may be extended, improved, or changed, it is essential that certain maps shall be available, and copies thereof shall be filed with the Commission whenever requested.

For convenience in inventorying and reporting the property of pipe line carriers valuation sections shall be established subject to the approval of the Bureau of Valuation. Generally a valuation section as referred to herein may include the properties of an owning carrier within state lines. In no case, however, shall a valuation section extend beyond state lines or include property owned by more than one common carrier by pipe lines.

Where maps already in existence contain in the opinion of the Commission the necessary information in such form that it is reasonably available, these will be accepted.

II. Maps Required

2. Classes and Titles.

Two general classes of drawings shall be made by the carrier, viz:

(a) Right-of-way maps.

(b) Land and structural maps.

A single copy only of right-of-way maps need be filed.

Land and structural maps shall be filed in duplicate.

The maps shall clearly distinguish between lands, rights of way and facilities owned or used for gathering lines and those owned or used for trunk lines.

The maps shall be made of materials of standard quality, using conventional symbols and plain lettering.

III. Form of Maps

Where existing maps do not meet the requirements of the Commission they shall be prepared as follows:

[fol. 679] 2. Size of sheets.

The maps shall be made in sheets 11 x 17 inches. A plain single line border shall be drawn on each sheet, dimensions inside of which shall be 10 by 16 inches. When more than one sheet is required to show a property, plat shall be made upon "matched marked" sheets in such manner as to require a minimum number.

4. Scales.

The right-of-way maps shall be made on a scale of 1 inch equals 1,000 feet, or 1 inch equals 2,000 feet.

The land and structural maps shall be made on a scale of 1 inch equals 100 feet, 1 inch equals 200 feet, or 1 inch equals 400 feet.

5. Arrangement of data.

The maps shall be made with the zero or lowest numbered station at the left side of each sheet and shall be platted from left to right. Where the use of this method would involve the abandonment of established survey station numbers, the platting may be done in such a way as to preserve them, provided the maps for any given line or branch are continuous in same direction between termini of line or branch. The general direction of the line shall be as nearly as possible parallel to and half way between the long sides of sheets, so that the maximum space each side of platted lines may be available for showing adjacent topography and property lines and for making notes as to physical property.

6. Cardinal points.

On all maps an arrow showing the true north and south line (as nearly as can be ascertained from existing rec-

ords) shall be placed. This arrow shall not be less than 3 inches in length and shall have the letter "N" marked at its north end.

7. Indexing.

All right-of-way and land and structural sheets shall be numbered serially, each beginning with sheet 1. The sheets representing valuation sections shall form separate series, and the valuation sections shall be numbered serially with the letter "V" preceding the number. Index numbers shall be in lower right-hand corner of the sheets and inclosed in plain, single line circles one inch in diameter. Valuation section numbers shall be in the upper half of circles and sheet number below with straight lines between.

[fol. 680] 8. Title.

The title shall be placed as near the lower right-hand corner as practicable. The following information shall be given therein:

(a) Corporate name of the pipe line company.

(b) Name of the operating company.

(c) Beginning and ending survey station numbers on sheet.

(d) Scale or scales.

(e) Date as to which maps represent the facts shown thereon.

(f) Office from which issued.

9. Certification.

A certification in legal form as to the correctness of all maps shall be executed and shall accompany such maps when submitted to the Commission.

IV. Data Required

10. Right-of-way map.

On the right-of-way map shall be shown the following data:

(a) Route of the right of way and alignment and number of pipe lines indicated by heavy line or lines, size, and date installed.

(b) Beginning and termination of section covered by map indicated by survey stations, mile posts, cities or towns.

(c) Length of line shown on map in feet where possible, or in miles to the nearest hundredths.

(d) Governmental lines. State and county lines or other political subdivisions.

(e) Topography. Topographical data such as location and names of cities, town-, important water courses, railways, and such other data as will assist in locating and identifying the property.

(f) Indexing data. Location covered by land and structural maps shall be shown by a circle on the right-of-way maps, placing in the circle reference to the land and structural map number. Where not practical to place the circle in exact location on the right-of-way maps it may be placed at one side with arrow from circle to exact location.

(g) Survey stations of all connecting or branch lines.

The term "right-of-way" as used herein, includes only pipe line easements as distinguished from lands owned or used.

[fol. 681] 11. Land and Structural map.

On the land and structural map shall be shown the following data:

(a) The location and extent of lands owned or used, no matter how acquired, for storage, station, office, shop and other grounds.

(b) Boundary lines and dimensions of each separate tract acquired.

(c) Each tract of land shall be given a parcel number and listed serially on B. V. Form No. 623.

(d) Where known, the property lines of adjacent land owners, the survey station of important intersections of property lines and the names of owners of adjacent lands.

(e) Section, township, county, state, city, town, village, or other governmental lines, with names or designations; the width and names of streets and highways which intersect or adjoin the property of the carrier; and the survey station at all such points of crossing or intersections.

(f) The section and quarter section lines for a maximum distance of one mile on each side of the property where the

adjoining land has been subdivided into townships and sections; such data as to divisions, tracts, streets, alleys, blocks and lots where the land has been divided in some other way than by sections.

(g) Survey stations of all connecting or branch lines.

(h) All important fixed improvements in general outlines together with survey station thereof.

(i) Water courses, railway and highway crossings, together with names thereof.

Section B—Corporate History and Development of Fixed Physical Property

Every common carrier by pipe line shall prepare a statement showing the following facts as to each corporation, company, or firm, at any time connected with said carrier by pipe line.

1. Give name of corporation, company, or firm; date of incorporation, and date of organization. If corporation, state whether incorporated under general law or by special act. If incorporated under general law, state where articles of incorporation were filed. If incorporated by special act, give reference to the act.

[fol. 682] 2. Describe the property, or portion of property, constructed by each corporation, company, or firm, and show as to each such property, or portion of property, as so constructed, the termini and mileage of each trunk line, the total mileage of gathering lines, and the dates of construction.

3. State length of time any such property, or portion of property, was actually operated by any such corporation, company, or firm, giving, in each instance, date of beginning and date of conclusion of such operation.

4. If any such corporation has gone out of existence, describe the proceedings by virtue of which the dissolution took place. If any such corporation is still in existence, state where its records are kept and give name and address of person who has custody of them.

5. State fully the chain of title by which the present corporation has acquired the property which it now owns or operates. In this connection, prepare and file with the Com-

mission, as aforesaid, a schedule of all deeds, leases, reorganization proceedings and other instruments bearing upon the corporate history, and assemble and arrange the same for inspection and examination by representatives of the Commission.

Section C—Schedules of Lands

General

Every common carrier by pipe line shall prepare, on forms similar to sample form B. V. 623 hereto attached, typewritten schedules in duplicate, the original to be carbon backed, showing as to each instrument through which such carrier has derived title to or interest in any parcel of land owned or used by it for the purposes of a common carrier, the character and date of the instrument, custodian's number, and grantor and grantee named therein. Such schedules shall also show as to each parcel of land owned or used by the carrier, for its purposes as a common carrier, the number assigned thereto on the maps required by Section A of this order, the area of the parcel and the date it was dedicated to public use, and the cost of the parcel to the carrier when so dedicated. If the parcel referred to is used but not owned, the rental or other consideration given for its use must be so indicated. If a portion of the parcel has been sold or retired after the parcel was dedicated to common carrier purposes as aforesaid, the carrier shall show in such schedule the amount of money or other consideration received for the portion so sold or retired. If such [fol. 683] portion disposed of was originally received as an aid, gift, grant or donation, the area disposed of shall also be shown.

Every carrier by pipe line shall also prepare on forms similar to sample form B. V. 625 hereto attached, additional typewritten schedules in duplicate, the original to be carbon backed, showing as to each instrument through which such carrier has derived title to or interest in any parcel of land held by it for purposes other than those of a common carrier, the same information and data required with respect to B. V. Form 623 hereinbefore referred to, and in addition thereto the date and cost of any improve-

ment placed by the carrier on such parcels subsequent to their acquisition.

Special Instructions

(1) Schedules on B. V. Form 623 shall be prepared for all lands owned or used. Land held in connection with gathering lines shall be separated from those held in connection with trunk lines.

(2) In the absence of deeds to lands owned, resort shall be had to county, parish, or other properly authenticated records for data required on B. V. Forms 623 and 625.

(3) Costs to be reported on Forms B. V. 623 and 625 are those contained in the records maintained by the accounting department of carriers. When these records are missing or deficient in the information sought, resort may be had to any other records that will show the costs required by the forms. In all cases, whether the information is obtained from the accounting records of the carrier or from other records or documents, the carrier must be prepared to point out to the accountant of the Commission the exact source from which the information was obtained so that the accountant of the Commission can examine this record without further search upon his part. The carrier may do this either by preparing a working list of the sources from which the information was derived, which can be exhibited to the accountant of the Commission, or by indicating that source in the column of "Remarks" upon the return itself, as "Voucher 196—September, 1924."

[fol. 684] (4) If the amount paid for any parcel of land cannot be ascertained from the accounting or other authentic records of a carrier, the amount named in the deed as the consideration shall be reported on Forms 623 and 625 as the original cost if the amount is substantial and was actually paid by the carrier.

(5) Columns showing considerations in money shall be footed and summaries made of such footings by valuation sections. Valuation section summaries shall in turn be summarized by states, and the state summaries brought together to show the grand total for all lands reported on B. V. Forms 623 and 625.

(6) Valuation section summaries shall be prepared to show, separately, expenditures for lands owned or used, as indicated below:

For land owned:

(a) Payments for, or bare cost of, land.
(b) Damages.
(c) Improvements on abutting property.
(d) Assessments for public improvements.
(e) Miscellaneous or incidental costs.

For lands used but not owned:

(a) Payments for right of use (excluding rental payments).
(b) Damages.
(c) Miscellaneous or incidental costs.

[fol. 685] Instructions for B. V. Form No. 623

The first and second columns shall contain the number assigned to each parcel of land and reference to map of the carrier, upon which such parcel appears.

The third column shall contain the number of the file in which each instrument conveying title to or interest in each parcel of land is kept by the custodian of the carrier.

The fourth column shall contain the legal character of the instrument through which title to or interest in each parcel of land has been derived, such as deed, quit claim deed, condemnation, ordinance, grant, donation, etc., and the date thereof.

The fifth column shall contain the name of the grantor in deeds, the defendant in condemnation suits, the name of the town, city, or village in ordinances, and the donor in grants and donations.

The sixth column shall contain the name of the individual or corporation to which the conveyance, etc., was made.

The seventh and eighth columns shall contain the area of each parcel of land as now owned and used for common-carrier purposes, said area to be shown either in acres or square feet as is appropriate.

The ninth column shall contain the date when dedicated to public use.

The tenth column shall contain the amount paid by the carrier for the acquisition of each parcel when originally acquired, cost of improvements placed on abutting property,

or damages thereto, assessments for public improvements applicable to lands owned and used, and any other expenditures incurred as part of the consideration for the conveyance, etc. Miscellaneous or incidental expenditures, such as material, appraisal, recording fees, etc., need not be shown in detail; only the lump sum applicable to each parcel need be reported.

[fol. 686] The eleventh column shall contain a brief description of the character of each entry made in the tenth column.

The twelfth column shall contain the amount received from the sale, or retirement, of any portion of a parcel, disposed of subsequent to date originally acquired.

The thirteenth column shall contain the area of any such portion of a parcel, disposed of, in which parcel was originally received as an aid, gift, grant or donation.

The fourteenth column shall contain any miscellaneous information relevant to the data required to be placed in the other columns.

Instructions for B. V. Form 625

Follow instructions for columns 1 to 8, inclusive, of B. V. Form 623.

The ninth column shall contain the amount paid by the carrier for the acquisition of each parcel of land, including the improvements thereon, when originally acquired, etc., miscellaneous or incidental expenditures, such as notarial, appraisal, recording fees, etc., need not be shown in detail; only the lump sum applicable to each parcel need be reported.

The tenth column shall contain a brief description of the character of each entry made in the ninth column.

[fol. 687] The eleventh and twelfth columns shall contain the date and cost of the construction of any improvements by the carrier on each parcel of land subsequent to its acquisition.

The thirteenth column shall contain the amount received from the sale, or retirement, of any portion of a parcel, disposed of subsequent to date originally acquired. If a portion of any improvements placed on a parcel subsequent to its acquisition has been sold, the actual consideration received therefor shall also be shown in this column.

The fourteenth column shall contain the area of any such portion of a parcel disposed of, if such parcel was originally received as an aid, gift, grant or donation.

The fifteenth column shall contain the consideration recited in the instrument through which title to or interest in each parcel of land has been derived, where special provisions, conditions, or covenants are recited other than the consideration shown in the ninth column; the owner of the improvements on each parcel where such owner is not the carrier; a brief description of the improvements placed by the carrier upon each parcel subsequent to its acquisition, and any miscellaneous information relevant to the data required to be placed in the other columns.

(Here follow 2 photolithographs, side folios 688-689)

I. C. C. Form No. 918

OWNER

OPERATING COMPANY

STATE COUNTY

VALUATION SECTION

FROM TO

REPORT TO INTERSTATE COMMERCE COMMISSION

BUREAU OF VALUATION

LANDS OWNED OR USED FOR LINE OPERATIONS

ACCOUNT NO. —LAND

AS OF 19

SHEET NO. 11 OF SHEETS (THIS FORM)

DATE COMPILED

COMPILED BY

CORRECT

TITLE

Map No. (1)	Parcel No. (2)	Custodian's No. (3)	Kind and Date of Instrument (4)	Grantor (5)	Grantee (6)	AREA IN ACRES OR SQUARE FEET: Acres (7)	AREA IN ACRES OR SQUARE FEET: Square Feet (8)	Date of Dedication to Public Use (9)	COST OF PARCEL WHEN ORIGINALLY ACQUIRED OR CONSIDERATION FOR USE: Amount (10)	COST OF PARCEL WHEN ORIGINALLY ACQUIRED OR CONSIDERATION FOR USE: Character of Expenditure (11)	SALE OF PORTION OF PROPERTY: Amount Received (12)	SALE OF PORTION OF PROPERTY: Area of Portion Sold if so sold (13)	REMARKS (14)

4961F

R. V. Form No. 605

REPORT TO INTERSTATE COMMERCE COMMISSION

BUREAU OF VALUATION

LANDS, INCLUDING IMPROVEMENTS THEREON, HELD FOR PURPOSES OTHER THAN THOSE OF A COMMON CARRIER

AS OF _____ 19__

GRANTEE _____

OPERATING COMPANY _____

STATE _____ COUNTY _____

VALUATION SECTION _____

FROM _____ TO _____

SHEET NO. 12 OF _____ SHEETS (THIS FORM)

DATE COMPILED _____

COMPILED BY _____

CORRECT _____

TITLE _____

Map No. (1)	Parcel No. (2)	Custodian's No. (3)	Kind and Date of Instrument (4)	Grantor (5)	Grantee (6)	AREA IN ACRES OR SQUARE FEET: Acres (7)	AREA IN ACRES OR SQUARE FEET: Square Feet (8)	ORIGINAL COST OF PROPERTY WHEN ACQUIRED: Amount (9)	ORIGINAL COST OF PROPERTY WHEN ACQUIRED: Character of Expenditure (10)	DATE AND COST OF SUBSEQUENT IMPROVEMENTS: Date (11)	DATE AND COST OF SUBSEQUENT IMPROVEMENTS: Amount (12)	SALE OF PORTION OF PROPERTY: Amount Received (13)	SALE OF PORTION OF PROPERTY: Area of Portion Sold If not All (14)	REMARKS (15)

[fol. 690] Section D—Machinery and Equipment

There shall be prepared on forms like sample form B. V. 627 attached hereto, statements in duplicate concerning the carrier's equipment and machinery, showing in detail the information specified in said attached form.

The registers and statements covered by said attached form shall be separately made for the following accounts, as prescribed by the Interstate Commerce Commission in its Uniform System of Accounts for Pipe Lines, effective January 1, 1935, namely:

Account number			
Gathering Lines	Trunk Lines	General	Title
107	157		Boilers
108	158		Pumping equipment
109	159	179	Machine tools and machinery
110	160		Other station equipment
112	162		Delivery facilities
115	165	185	Vehicles and other work equipment
116	166	186	Other property

Costs reported shall be those contained in accounting records maintained by the carrier, except that in the absence or incompleteness of such records, the deficiency may be supplied by reference to the records of the mechanical or other department.

Estimates of cost shall be plainly identified as such by appropriate symbol and explained in a foot note showing the name and title of the official responsible for the estimates. When, in the absence of original cost, appraised values are reported, that fact must be shown by foot note giving the date of the appraisal.

The several elements of cost of a given unit shall be cross-added and entered in the "Grand total" column opposite each such unit. Individual cost columns and the "Grand total" column shall be footed and a balance struck for each sheet. The footings of those sheets shall be summarized to show separately the cost of each class of equipment, kind of machinery, etc.

Miscellaneous small tools, belting, shafting, etc., may each be grouped in one item on B. V. Form 627 and separate exhibit attached showing detail, description, etc.

Separate reports on B. V. Form 627 shall be made for all machinery and equipment assigned for use on trunk lines as distinguished from that assigned for use in connection with gathering lines.

(Here follows 1 photolithograph, side folio 691)

I. V. Form No. 577

REPORT TO INTERSTATE COMMERCE COMMISSION

BUREAU OF VALUATION

OWNER _____

OPERATING COMPANY _____

STATE _____ COUNTY _____

VALUATION SECTION _____

BY _____
(NAME OF REPORTING CARRIER)

ACCOUNT NO. _____

SHEET NO. 14 OF _____ SHEETS (THIS FORM)

DATE COMPILED _____

COMPILED BY _____

CORRECT _____

TITLE _____

DATE		Carrier No.	DESCRIPTION	No. of Units	NET WEIGHT	FOUNDATION		F. O. B. and Receiving Points	ORIGINAL COST IN DOLLARS							
Definitely Purchased	Installed / Date of Installation		Make, Serial No., Kind, Motor, Size, Capacity, Model, Type, Special Features and Appliances (If reconditioned, show date built and from whom purchased.)		(Pounds Per Unit)	Excavation Cu. Yds.	Masonry Cu. Yds.		At F. O. B. Point	Freight Paid	Drayage	Installation, Test, Etc.	Foundation	Total	Net Cost of Additions and Betterments	Grand Total

[fol. 692] Section E—Prices of Materials, Construction Costs, and Rates Paid Labor

There shall be prepared a schedule showing the purchases made and net prices paid for such purchases, projects constructed, and the costs of same and the rates of compensation paid its employees, in the manner prescribed on B. V. Forms 628 to 633, inclusive, and complying with the following instructions:

The purchases, contracts and company work projects are to be the largest ones for each of the years 1929-1934, inclusive, and not less than five per year when that many purchases have been made or that many contracts let.

Instructions for B. V. Forms 628, 629, 631 and 632

(1) The cost of inspection or testing will be shown only on Form 632. With this exception, no labor costs are to be shown on these forms.

(2) Fill each column of the forms by entering the information called for; otherwise by the notation "Unknown" or "None." Any additional information or explanation necessary to proper understanding of data should also be given.

(3) If the prices given were fixed by competitive bids, so state.

(4) The name of the person compiling the data should be given in the space provided for that purpose, and the complete data shall be certified as "Correct" with the signature and title of the person so certifying on each form.

(5) The report shall be typewritten on white tough paper.

Instructions for B. V. Form 630

If constructed under contract, or by company work, give detailed costs in place. If such data are not available, furnish in detail the carrier's preliminary estimate.

Follow instructions Nos. (2), (3), (4), and (5).

Instructions for B. V. Form 633

Show in column "Remarks" the number of hours included in "Rate per Day."

Follow instructions Nos. (2), (4), and (5).

I. V. Form No. 600

REPORT TO INTERSTATE COMMERCE COMMISSION

BUREAU OF VALUATION

COST DATA

LINE PIPE

SHEET NO. 16 OF _____ SHEETS (THIS FORM)

DATE COMPILED _____

COMPILED BY _____

CORRECT _____

TITLE _____

OWNER _____

OPERATING COMPANY _____

Year Purchased (1)	MAKER (2)	DESCRIPTION					WEIGHT IN POUNDS PER LIN. FT.		Point of Original Shipment (10)	F. O. B. Point (11)	Quantity Purchased in Lin. Ft. (12)	COST PER LIN. FT. AT F. O. B. POINT		REMARKS (15)
		Size or Nominal Bore (3)	Standard Dimension by Index (4)	Material and Grade (5)	Longitudinal Electric Weld or Seamless (6)	Plain End or Threaded (7)	Plain Ends (8)	With Threads and Couplings (9)				Plain Ends (13)	With Threads and Couplings (14)	

INSTRUCTIONS TO CARRIERS: Show on this form for each calendar year, 1923-1934 inclusive, at least the five largest representative purchases. Otherwise, show each purchase as have been made.

I. C. C. Form No. 599

REPORT TO INTERSTATE COMMERCE COMMISSION

BUREAU OF VALUATION

COST DATA

OWNER

OPERATING COMPANY

SHEET NO. 17 OF SHEETS (THIS ITEM)

DATE COMPILED

COMPILED BY

CORRECT

TITLE

LINE PIPE FITTINGS

(1)	MAKER (2)	DESCRIPTION					Point of Original Shipment (8)	F. O. B. Point (9)	Quantity Purchased Each (10)	Cost Per Each at F. O. B. Point (11)	REMARKS (12a)
		Size or Nominal Bore (3)	Nominal Diameter in Inches (4)	Material (5)	Kind and Description (6)	Weight in Pounds Each (7)					

INSTRUCTIONS TO RESPONDENTS: Show on this form for each calendar year 1913-1914 inclusive, at least the five largest representative purchases. Otherwise, show such purchases as have been made.

REPORT TO INTERSTATE COMMERCE COMMISSION

BUREAU OF VALUATION

COST DATA

PIPE LINE CONSTRUCTION

SHEET NO. 15 OF SHEETS (THIS FORM)

DATE COMPILED

COMPILED BY

CORRECT

TITLE

Year (1)	LOCATION			Type of Construction (4)	Length in Miles (5)	Average Depth of Ditch in Inches (6)	Average Width of Ditch in Inches (7)	Kind of Soil (8)	Average Stock in Miles (9)	DESCRIPTION OF PIPE				Type of Coupling (13)	Type of Coating (14)	COST PER FOOT IN CENTS									
	From (2)	To (3)	State (4)							Standard Weight or Gauge (11)	Length of Joint (12)	Name of Kind (13)	Wt. Per Lin. Foot (14)			Size of Ditch (15)	Clearing Right of Way (16)	Grading and Refilling (17)	Stringing (18)	Laying (19)	Caulking (20)	Rock Ditch (21)	Damages (22)	Transportation and Handling (23)	Total Cost (24)

INSTRUCTIONS TO CARRIERS: Keep columns of reports with no entries blank and indicate kind of work.

B. V. Form No. 501

REPORT TO INTERSTATE COMMERCE COMMISSION

BUREAU OF VALUATION

COST DATA

OIL TANKS

SHEET NO. 19 OF SHEETS (THIS FORM)

OWNER

OPERATING COMPANY

DATE COMPILED

COMPILED BY

CORRECT

TITLE

Year Purchased (1)	MAKER (2)	DESCRIPTION								Quantity Purchased (11)	Point of Original Shipment (12)	F. O. B. Point (13)	Cost Each at F. O. B. Point (14)	Cost Each Erected (15)	REMARKS (16)
		New or Second Hand (3)	Nominal Size in Barrels (4)	Material (5)	Diameter in Feet (6)	Height in Feet (7)	Type of Roof (8)	Kind and Description, Including Appurtenances (9)	Weight in Pounds (10)						

INSTRUCTIONS TO CARRIERS: Show on this form for each calendar year, 1910-1914 inclusive, at least the five largest representative purchases. Otherwise, show each purchase as have been made.

I. C. C. Form No. 555

REPORT TO INTERSTATE COMMERCE COMMISSION

BUREAU OF VALUATION

COST DATA

COMMUNICATION SYSTEMS

80

SHEET NO. _____ OF _____ SHEETS (THIS FORM)

OWNER _____

OPERATING COMPANY _____

DATE COMPILED _____

COMPILED BY _____

CORRECT _____

TITLE _____

Year Purchased (1)	Use (2)	Length in Miles (3)	DESCRIPTION (4)	MAKER (5)	Code or Catalog Number (6)	From Whom Purchased (7)	Point of Original Shipment (8)	F. O. B. Point (9)	Unit (10)	Units Purchased (11)	Weight Per Unit (12)	COST PER UNIT			
												At F. O. B. Point (13)	Transportation (14)	Freight Paid (15)	Total (16)

INSTRUCTIONS TO CARRIERS: Under description, give length, class and material of poles and cross-arms; give type, gauge, number of poles, insulation, sheath and armor of cables. Give principal items of equipment, switchboards, etc. Give gauge and material of bare wire.

I. C. C. Form No. 656

REPORT TO INTERSTATE COMMERCE COMMISSION

BUREAU OF VALUATION

COST DATA

RATES OF COMPENSATION

SHEET NO. 22 OF _____ SHEETS (THIS FORM)

OWNER _____

OPERATING COMPANY _____

DATE COMPILED _____

COMPILED BY _____

CORRECT _____

TITLE _____

Year	OCCUPATION	RATE PER									REMARKS
		LABOR			HAUL						
		Hour	Day	Month	Hour	Day	Month	Lin. Ft.	Cwt.	Ton Miles	
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	
	Foreman										
	Assistant Foreman										
	Common Laborers										
	Teams including drivers										
	Trucks 2 2										
	Linemen										
	Groundmen										
	Welders										

NOTE: Where rates vary for different territorial regions, show rates separately.
If rates vary due to capacity of trucks or trains, show capacity under "Remarks" column.

[fol. 699] Section F—Aids, Gifts, Grants and Donations (Other than lands reported on B. V. Forms 623 and 625)

Every common carrier by pipe line shall prepare a report in duplicate on forms like sample B. V. Form No. 626 attached, showing, by states, territories, and the District of Columbia, as to every aid, gift, grant or donation, to such common carrier, or to any previous corporation which has operated in the past all or any portion of such property, the following information:

1. Show reference to the ordinance, agreement or other instrument under which the aid, gift, donation, or grant was made, showing the conditions attached thereto.

2. State the character and extent of the aid, gift, donation, or grant received in the form of money, land, material, property, service, credit, etc. in accordance with the information called for on B. V. Form 626. Only such land as is received as a grant or donation and entirely disposed of prior to date of valuation should be reported on this form. For such lands show area and proceeds from sale or other disposition.

3. Show the amount and value of any concession and allowance made by the carrier or by any previous owning corporation to the donor in consideration of any aid, gift, donation, or grant.

4. Show by foot notes and appropriate symbols, with respect to each item upon this return a reference to the account to which the item was credited.

5. The sum of the aid, gifts, grants or donations reported shall be compared with any credits made in the books of accounts in respect thereto and an explanation of any differences shall be made.

6. The carrier shall explain how it has determined the estimated value at time of acquisition of aids, gifts, grants, or donations, other than cash.

(Here follows 1 photolithograph, side folio 700-701.)

5081

I. C. C. Form No. 480

SHEET NO. 83 OF _____ SHEETS (THIS FORM)
DATE COMPILED _____
COMPILED BY _____
CORRECT _____
TITLE _____

REPORT TO INTERSTATE COMMERCE COMMISSION

BUREAU OF VALUATION

Report of aids, gifts, grants, or donations (other than lands shown on B. V. Forms 822 and 825) received by the _____ Company or its predecessors, to December 31, _____, from the Government of the United States, or from any State, County, or municipal government, or from any individual, association, or corporation.

Name of corporation that directly or indirectly received the aid, gift, grant, or donation from the donor. (1)	DONATED BY (2)	Description of aid, gift, grant, or donation, and if land, sales and proceeds from sale. (3)	Date of Acquisition (4)	Instrument or Act by Which Acquired (5)	Value of aid, gift, grant, or donation at date of acquisition. (6)	Recorded money expenditures made by carrier to acquire the aid, gift, grant or donation. (7)	REMARKS (8)

[fol. 702] EXHIBIT 46

Interstate Commerce Commission

Washington, D. C.

Order

At a General Session of the Interstate Commerce Commission, Division 1, held at its office in Washington, D. C., on the 12th day of April, 1935.

The subject of preparing a field inventory of the property of all common carriers by pipe lines for purposes of valuation under Section 19a of the Interstate Commerce Act, as amended, being under consideration:

It is ordered, That every common carrier owning or operating a pipe line whose property is subject to valuation under Section 19a of the Interstate Commerce Act, as amended, and every receiver or operating trustee of such a carrier shall prepare in duplicate and file with the Commission the original copies of a complete inventory of its property, except land, showing the quantities, units, and classes or kinds of property and the condition thereof.

It is further ordered, That such inventory shall be made as of such date as shall be prescribed by the Director of Valuation, shall begin within 30 days from the receipt from the Director of Valuation of written notice of this order and of the date of valuation prescribed, and shall be completed and filed within such time as he shall require, provided that he shall allow in all cases a reasonable time for the preparation and filing of such inventory which shall in no case be less than 30 days.

It is further ordered, That regulations and instructions to govern the preparation and filing of inventories of their property by carriers by pipe lines, are hereby approved and adopted, and a copy thereof is attached to and made a part of this order.

It is further ordered, That the said regulations and instructions be, and they are hereby prescribed for the use of all carriers by pipe line subject to the provisions of the Interstate Commerce Act, as amended, and all receivers or operating trustees of such carriers, in preparing and reporting inventories of their property as hereinabove required, and that a copy of said regulations and instruc-

tions be sent to each and every such carrier and to each and every receiver or operating trustee of any such carrier.

By the Commission, division 1. George B. McGinty, Secretary. (Seal.)

[fol. 703] Regulations and Instructions to Govern the Preparation and Filing of Field Inventories of the Property of Pipe Line Carriers

General

(1) *The Intent of Instructions.*

These instructions are intended to describe how the property of the carriers shall be inventoried and what data are to be ascertained and recorded.

(2) *Duties of Representatives of the Bureau of Valuation.*

Representatives of the Bureau of Valuation designated for that purpose shall supervise, review and check the inventory of the property of the carriers and shall be empowered to sign the field notes taken in the making of the inventory.

In case of disagreement with the representatives of the carriers as to facts, the representatives of the Bureau shall file with the field notes a statement of the exceptions taken to the inventory notes.

(3) *Duties of Carriers.*

All pipe line carriers subject to the provisions of the Interstate Commerce Act, shall record on forms supplied to them, an inventory of all of the property owned or used by them and its condition, in accordance with Valuation Order No. 27 and the instructions herein provided. Sample field notes taken on prescribed forms recording property usually encountered on pipe lines in general are attached hereto and made a part of these instructions and shall serve as a guide in preparing the inventory.

(4) *Inventory.*

(a) *Classification.*—Property shall, as nearly as practicable, be classified in conformity with the classification set forth in the carrier property accounts contained in

the Uniform System of Accounts for Pipe Lines prescribed by the Commission, as follows:

[fol. 704]

Gathering line account	Trunk line account	General	Title
103	153		Line Pipe
104	154		Line Pipe Fittings
105	155		Pipe Line Construction
106	156	176	Buildings
107	157		Boilers
108	158		Pumping Equipment
109	159	179	Machine Tools and Machinery
110	160		Other Station Equipment
111	161		Oil Tanks
112	162		Delivery Facilities
113	163	183	Communication Systems
114	164	184	Office Furniture and Equipment
115	165	185	Vehicles and Other Work Equipment
116	166	186	Other Property

The inventory shall be made separately for each of the following classifications:

(1) Wholly owned and used.
(2) Jointly owned and used.
(3) Wholly owned but not used.
(4) Wholly used but not owned.
(5) Property owned but not used for carrier purposes.

In the case of property coming within the classification of (2), (3), and (4), where the ownership and use of the same piece of property is involved, a definite understanding shall be reached between the interested parties as to which carrier shall ber esponsible for the field work.

(b) *Valuation Sections.*—The inventory shall be prepared and the required data shown by what is known as "valuation sections." Valuation sections shall consist of particular portions of the property designated by termini. All such sections must be approved by the Bureau of Valuation. The trunk lines and the gathering lines shall be distinguished by the use of capital letters "T" and "G" respectively, following the valuation section number.

(c) *Form of Notes.*—All notes shall be made in duplicate. When completed for a particular valuation section, notes shall be bound, signed by representatives designated by the carrier, and both copies forwarded to the Bureau's field representatives. The originals and carbons shall not

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MB
4 6
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be separated until reviewed and checked by them, after which the carbon copy will be returned to the carrier. [fol. 705] Each volume or book of notes shall be accompanied by a title page which shall show:

The name of the carrier making the inventory.
The valuation section number.
Beginning and ending survey station number and mile post, if any, on the chaining notes.
The kind of notes, whether chaining, structural, mechanical, or communication.

Sheets for the various valuation sections shall be numbered consecutively by accounts and the date for each day's notes shown on each page.

The chaining (Accounts 103, 153, 104, 154, 105 & 155) structural (Accounts 106, 156, 176, 110, 160, 111, 161, 112, 162, 114, 164, 184, 116, 166 and 186), mechanical (Accounts 107, 157, 108, 158, 109, 159, 179, 115, 165, and 185), and communication (Accounts 113, 163 and 183) notes shall be bound in separate books.

(d) *Condition of Property.*—Notes in respect to the condition of the property shall be made in accordance with the following outline:

(1) Age.—State the year of construction, installation or purchase of the property, whether new, secondhand, or reconditioned. If secondhand, state, if possible, length of service elsewhere, noting course of data.

(2) Wear and decay.—Record such notes as may be justified from observation. Such test pits as are necessary to complete an adequate record of the physical condition of the buried pipes and fixtures shall be dug. The test pits should be dug at such intervals as required in order to reveal the condition of the line. A 4-foot section of the pipe shall be exposed and thoroughly cleaned. This section of pipe shall then be marked off in four 1-foot sections, and maximum pit depths measurements made and recorded for each of the 1-foot sections. They shall be recorded in the manar set forth in the sample inventory. Additional record shall be kept of any suggested conditions having a bearing upon the physical condition of the pipe or upon its expected normal service life.

(3) Maintenance.—Record whether maintenance is normal; that is, record whether standard of maintenance is such as to secure average service life.

(4) Record Total Estimated Service Life.—Record any conditions which tend to shorten or lengthen service life. Record in special notes any evidence as to inadequacy or obsolescence.

[fol. 706] (e) *Non-carrier Property.*

Definition.

Non-carrier property is property owned or leased by carrier, but not used for common-carrier purposes.

Non-carrier property shall be inventoried separately and included in the special notes.

(f) *Abandoned Property.*

When the carrier makes a claim for abandoned property, the inventory notes respecting same shall be bound in the special notes.

(g) *Additions, Betterments and Retirements.*—The field inventory shall reflect true conditions in the property as of date of valuation, December 31, 1934. Where property has been constructed or installed between date of valuation and date of field work, it need not be inventoried unless directed by the Bureau's representatives. In such cases, it should be separately recorded and marked "Installed after date of valuation." In the case of property retired after date of valuation, an effort should be made to secure an inventory of the retired property in the field or from records.

(h) *Detail of Inventory.*—There shall be ascertained and recorded in the field notes, information of which the following is illustrative:

(1) Chaining:

Accounts 103, 153, 104, 154, 105 and 155.

The chaining notes shall show the size, thickness, manufacturer, and type of pipe, and shall indicate by station and plusses—

Changes in size or character of pipe.

Fence crossings.

River crossings.

Structures owned by carrier adjacent to line of chaining.

Changes in general character of trench excavation.

State lines.

Junctions with other pipe lines.

Changes in protective coating.

Changes in type of joints or in kind of welding of the joints.

Beginning and end of double line of pipe, etc.

[fol. 707] Beginning of secondhand or reconditioned pipe.

Change in character of clearing and grubbing.

Prepare summaries of line pipe, line pipe fittings, and pipe line construction.

(2) Structural:

Accounts 106, 156 and 176, Buildings.

Location of structure.

Description: Kind of type of building or structure, whether stone, brick, timber or other designation.

Dimensions: Essential dimensions for computations of quantities, supplemented by necessary sketches.

Foundations: Kind and dimensions, depth and classification of excavation.

Material and workmanship: Description, grade and quality of work of carpentry, painting, etc.

Plumbing: Number and description of fixtures, piping, etc.

Heating and Ventilation: Description, number and sizes of boilers, furnaces, radiators, etc.

Lighting: Number of outlets, kind and number of fixtures, description of wiring and piping, etc.

Platforms: Kind and dimensions.

Drainage: Kind and description of sewers and appurtenances.

Landscape Accessories: Description.

Photographs of important structures.

Stacks not mounted on boilers: Show manufacturer, kind of material, height and diameter.

[fol. 708] Accounts 110 and 160, Other Station Equipment.

Location: Name of station and building or structure.

Minor Pipe Fittings and Valves, less than 2 inches in diameter when used for steam, cooling water, air, gas, crude, fuel and lube oil lines inside of buildings and between the station manifolds, pits, and tanks or reservoirs, may be inventoried as one lot and cost in place estimated in the field. A brief description of the pipe included must be given.

Pipe Fittings and Valves, 2 inches and over in diameter and pipe not inventoried as one lot must be described as to location, diameter, kind, weight, average length of joints, kind of joints, description of protective coatings, character and depth of trenching, amount and character of clearing and grubbing.

Fittings: Size, kind, material, working or test pressure, special welds, and descriptions, sketch, or plan of any special fittings.

Valves: Size, kind, manufacturer's name and number, material, working or test pressure, kind of ends.

Manifolds and Heat Exchangers: See Pipe Fittings and Valves.

Pits: Kind, material, inside dimensions, thickness of top, bottom, and sides.

Deep Well Pumps: Kind and size of pump head, sucker rods, drop line, and working barrel.

Tanks and Reservoirs. See Accounts 111 and 161.

Transformers: Capacity in K. V. A. voltage, cycle, phase, and name of manufacturer.

Refrigeration Systems: Capacity of plant, name of manufacturer, and description of pumps, compressors, etc. See Accounts 108 and 158.

Electric Lighting Plants: Size, name of manufacturer and storage capacity.

Gauges: Kind, make and working range. Diameter of dial and kind of case.

Accounts 111 and 161, Oil Tanks.

Location, kind, and capacity in barrels, dimensions, date built. State whether new or secondhand.

Show carrier's structure number.

General:

Grading: Kind and amount in cubic yards.

Clearing and grubbing: Character and amount in acres.

Fire Banks: Excavation in cubic yards.

Fire Bank Drains: Kind, size, and length.

Fire Bank Slope Protection: Show kind and amount.

Foundation: State kind and list bill of material.

[fol. 709] Steel Tanks:

Name of manufacturer and shipping weight when available.

Number of rings in shell; also, thickness of top and two lower rings; kind of joints, whether riveted, welded or bolted.

Type of roof, whether flat or cone; kind of roofing and framing.

Show height of towers or underframe and size of main members.

Stairways: Show width and length.

Wood Tanks:

For circular tanks show thickness and kind of stave material; also, number and size of hoops.

Rectangular Tanks and Underframe: List bill of material.

Roofs: See "Steel Tanks."

Fixtures and Appurtenances:

State number, size, kind, and name of manufacturer; also, state whether located on shell or roof.

Suction and Discharge Connections: Show size and detail of pipe fittings, including swing pipe, valves, winches, etc.

Accounts 112 and 162, Delivery Facilities.

State location.

Wharves and Docks:

Make a single line sketch of layout, giving necessary descriptions, measurements, and a bill of material.

State kind of material.

Show total number and average length of piling measured under cut-off. State whether piling is bearing, fender, or mooring.

Delivery Racks:

Give description; state dimensions and list bill of material.

Unloading Pits:

Show inside dimensions, thickness of top, bottom and sides.

Dredging:

State character and amount.

Pipes and Pumping Machinery:

See Accounts 103, 153, 104, 154, 107, 157, 108 and 158.

[fol. 710] (3) Mechanical:

Accounts 107 and 157; Boilers.

Location: Name or number of station.

Manufacturer and manufacture's serial number.

Carrier's number (if any has been assigned).

Type (certical or horizontal). Return tabular, water tube, scotch marine, locomotive, or other type.

Builder's rated horsepower and working steam pressure.

Diameter and length of shell or drums.

Number, diameter, and length of flues.

Kind of fuel used.

Make, kind and description of specialties, such as superheaters, stokers, oil burners, gas burners, draft regulators, low water alarms, etc.

Breeching: Dimensions and thickness of material, (make sketch if necessary), describe lining.

Metal Stacks (when supported by boiler). Diameter, height, and thickness of material.

Foundation and Settings: Where drawings are not available, prepare sketches showing general arrangement of boilers. Calculate quantities of materials for boiler settings, foundations, and excavation. Record any unusual conditions regarding soil and depth of foundation.

Accounts 108 and 158, Pumping Equipment.

Accounts 109, 159 and 179, Machine Tools and Machinery.

Location: Name or number of station.

Pumping unit number in the station: Kind, capacity, model, type and size, (in usual trade terms).

Manufacturer and manufacturer's serial number.

Carrier's number (if any has been assigned).

List and describe special attachments and materials, not regularly furnished with the piece of equipment, which affect the price.

Drive: Kind and description.

Motor and Controller: Reading on name plate.

Foundation: Cubic feet or yards of excavation, concrete, and list of other materials. Attach print of foundations for large units. Record any unusual conditions regarding soil and depth of foundation.

[fol. 711] Accounts 115, 165 and 185, Vehicles and Other Work Equipment.

Passenger Automobiles:

Manufacturer's name.

Kind—body.

Serial and engine numbers.

Model and year.

Date placed in service.

Trucks:

Same as above, except state capacity in tons and if equipped with dual wheels.

Other Work Equipment:

Manufacturer and manufacturer's serial number.

Kind, capacity, model, type and size (in usual trade terms).

List and describe special attachments, not regularly furnished with the piece of equipment, which affect the price.

(As a guide to the classification of the various items of property or their allocation to a specific account, there is attached hereto, as Appendix "A", a tabulation of the various items of property grouped under the headings of Chaining, Structural, Mechanical and Communication, and allocated to their proper account.)

(i) *Special Notes to be made by Carrier:* These notes shall contain the following:

(1) A brief description of—
(a) The topography of the country.
(b) Rainfall.
(c) Climate.
(d) Material yards used in original construction and recommended to be used under a reasonable construction program.
(e) Character of highways, roads, or trails.
(f) Proximity of railroads to pipe lines.
(g) Character and depth of trench excavation.
(h) Soil surveys, if any made by carrier.

(2) Statistical information on—
(a) Capacity of pipe line.
(b) Daily pipe line movements.
(c) Mileage of pipe on valuation section.
[fol. 712] (d) Production statistics, if available, of the various oil fields served by pipe line.
(e) Costs of construction of line, if available.
(f) Service lives of major items of property, if carrier has available records.

(3) Depletion:
(a) Estimated remaining life of oil fields served by pipe line.
(b) Water conditions in oil fields.
(c) Depth of various producing oil sands, as well as description of formations.
(d) Bottom hole pressure.
(e) Total underground reserves as of date of valuation, stating source of information.

(4) General conditions and standards of maintenance of property.

(5) Copies of contracts covering leases of pipe or joint ownership.

(6) Depreciation notes.

(7) Non-carrier property notes.

(8) Abandoned property notes.

(9) Photographs showing original construction.

[fol. 713] APPENDIX "A"

Allocation of Items of Property to Accounts

The items of property listed herewith, when consistent with use, shall be inventoried to the following accounts:

I. Chaining

Accounts 103 and 153—Line Pipe.
Line pipe.

Accounts 104 and 154—Line Pipe Fittings.
Gate valves.
Check valves.
River clamps.
Vitaulic couplings.
Dresser couplings.
Railroad and highway casing.
Ells.
Tees.
Bull plugs.
Flange unions.
Nipples.
U-Bolt clamps.
Companion flanges.
Strainers

Accounts 105 and 155—Pipe Line Construction.
Protective coating.
Clearing and grubbing.
Trenching.
Pipe line supports.

II. Structural

Accounts 106, 156, and 176—Buildings.
Cess pools and sewer lines.
Water service lines, hydrants, et cetera.
Wells. (Pumping equipment included in Other Station Equipment.)
Water storage tanks.
Platforms.
Material bins, racks, et cetera.

Inside lighting, heating and plumbing.
Station approach roads, including surfacing, clearing, grubbing and grading, and right-of-way fences.
Landscaping.

[fol. 714] Accounts 110 and 160—Other Station Equipment.
Manifolds and manifold pits.
Suction and discharge headers.
Heat exchangers and pits.
Pump suction and discharge piping.
Oil storage suction and discharge lines between pumping station or manifolds and storage tanks.
All circulatory water lines and water tanks for engine cooling.
Water cooling reservoirs and spray towers.
Deep well pumps.
Station engine fuel pipe lines and station fuel storage tanks.
Station lube oil pipe lines and tanks.
Boiler feed suction pipe lines.
Refrigeration and lighting plants.
Outside power distribution systems, transformer banks, outside lighting and outside lighting wires to main entrance lighting switch in buildings.

Accounts 111 and 161—Oil Tanks.
Oil storage facilities, such as earthen reservoirs, tanks of either metal, wood, or concrete construction.
Clearing and grubbing, grading, roofs, fire banks, fire bank drains, steam coils, swing pipes, inlet valves and outlet valves, appurtenances such as flame arresters, breathers, tank filling and suction connections, explosion hatches, et cetera.

Accounts 112 and 162—Delivery Facilities.
Wharves, including buildings.
Docks, slips, including dredging; piling, pile protection, cribs, cofferdams, and walls.
Pipe lines from pump house to delivery facilities, including appurtenances.
Boilers, engines, pumps and appurtenances at delivery facilities.
Pipe and valve pits.

Railroad tracks, driveways, fences, walkways, landscaping, et cetera.
Lighting.

Power distribution wiring, transformers, et cetera.

[fol. 715] III. Mechanical

Accounts 107 and 157—Boilers.
A complete boiler.

Accounts 108 and 158—Pumping Equipment.
Steam pumping engine with or without foundation.
Oil line pumping unit with or without foundation.
Complete booster pump with or without foundation.
Complete sump pump with or without foundation.
Power transmission system.

Accounts 109, 159 and 179—Machine Tools and Machinery.
Machine tool with or without foundation.
Motor, generator, steam engine, fire pump, feed water pump, ventilating fan, or other similar equipment.
Coal-handling system.
Ash-handling system.
Feed water heater.

Accounts 115, 165 and 185—Vehicles and Other Work Equipment.
Passenger automobile.

Truck, with or without body.
Tractor, trailer, ditcher, pole derrick, power winch, earth-boring machine.

IV. Communications

Accounts 113, 163 and 183—Communication System.
Poles.
Cross-arms.
Guys and anchors.
Aerial wires.
Small office equipment.
Aerial and submarine cable.
Underground conduits.
Underground cable.

[fol. 716] EXHIBIT 47

December 3, 1941

Memorandum

At the hearing on November 12th Mr. Thomas, Attorney of the General Council's office of the Interstate Commerce Commission requested that such documents as are available be submitted to show the ruling of the Commissioner of Internal Revenue with reference to the taxation of transportation by pipe line as explained in my testimony.

In compliance therewith there are attached:

1. A letter dated June 15, 1937 signed by D. S. Bliss, Deputy Commissioner of Internal Revenue setting forth the ruling of the Commission.

2. Copy of a letter dated September 18, 1937 concerning the claim for abatement of the assessment in the amount of $1,714.48 made pursuant to the ruling contained in the letter of June 15th and suggesting a date for an oral hearing. The oral hearing was not held and after some correspondence the matter was disposed of in accordance with a letter dated April 12, 1938.

3. A copy of a letter dated April 12, 1938 signed by D. S. Bliss, Deputy Commissioner rejecting the claim for abatement.

The tax plus $75.91 interest was paid to the Deputy Collector of Internal Revenue at Enid, Oklahoma on April 29, 1938 for which the company holds receipt No. 1978691.

Should any further information in this connection be desirable it will be supplied upon request.

Respectfully submitted, G. E. Leverton.

TREASURY DEPARTMENT

WASHINGTON

OFFICE OF
COMMISSIONER OF INTERNAL REVENUE

ADDRESS REPLY TO
COMMISSIONER OF INTERNAL REVENUE
AND REFER TO

MT:ST:WLP

JUN 15 1937

Champlin Refining Company,

Enid, Oklahoma.

Gentlemen:

Reference is made to a report dated February 26, 1937, covering your liability for the tax imposed by section 731 of the Revenue Act of 1932 on the transportation of gasoline by pipe line from Enid, Oklahoma to Hutchinson, Kansas, and Superior, Nebraska.

It is understood that the distance from Enid, Oklahoma, to Hutchinson, Kansas, is 113 miles, and from Hutchinson, Kansas, to Superior, Nebraska, 143 miles, making a total of 256 miles from Enid, Oklahoma, to Superior, Nebraska.

In reviewing the report, it is found that the charge used as the basis for tax purposes is the difference between the sale price of the gasoline at Enid and the delivery price at Hutchinson or Superior. This office does not agree that the difference represents the fair charge on which the tax should be based in the case where the transporter is the owner of the pipe line as well as the commodity transported.

A study of the charges made for the transportation of gasoline by pipe line, as disclosed by the records of this office, shows that 20 cents per barrel is the fair charge for a movement of 113 miles, and 35 cents per barrel is the fair charge for a movement of 256 miles. In view of this finding, you are advised that your tax liability for the transportation of gasoline to Hutchinson, Kansas, and Superior, Nebraska, will be computed on the basis of the rates set forth in this letter and any additional tax disclosed will be assessed, for which you will receive notice and demand in due course.

Respectfully,

D. S. Bliss,
Deputy Commissioner.

cc-Oklahoma City,Okla.

TREASURY DEPARTMENT

WASHINGTON

OFFICE OF
COMMISSIONER OF INTERNAL REVENUE

ADDRESS REPLY TO
COMMISSIONER OF INTERNAL REVENUE
AND REFER TO

MT:ST:WLP
Cl. S-55890

SEP 10 1937

Champlin Refining Company,

Enid, Oklahoma.

Gentlemen:

Reference is made to your claim for abatement of $1,714.48, tax and interest alleged to have been erroneously assessed under Section 731 of the Revenue Act of 1932. The period involved is from July 1, 1935, to December 31, 1936, inclusive.

It is contended that the rates on which the tax was assessed do not represent the fair charge for the pipe line services performed by your company.

Since this office does not concur with your contentions and in compliance with your request for an oral hearing, you are advised to fix the day and hour on which you wish to appear and in the event you are not notified to the contrary, you may assume that the time set by you is satisfactory to this office. You should call at Room 6237, Internal Revenue Building, 12th Street and Constitution Avenue, N. W., Washington, D. C., at the appointed time.

Respectfully,

Adelbert Christy

Adelbert Christy,
Acting Deputy Commissioner.

TREASURY DEPARTMENT

WASHINGTON

OFFICE OF
COMMISSIONER OF INTERNAL REVENUE

ADDRESS REPLY TO
COMMISSIONER OF INTERNAL REVENUE
AND REFER TO

APR 12 1938

MT:ST:WLP
Cl: S-55890

Champlin Refining Company,

Enid, Oklahoma.

Gentlemen:

Reference is made to your claim for abatement of $1,714.48, representing tax and interest alleged to have been erroneously assessed under section 731 of the Revenue Act of 1932. The period involved is from July 1, 1935, to December 31, 1936, inclusive.

Under dates of September 16, 1937, and October 23, 1937, you were advised of your privilege to file certain additional evidence in support of your claim. Under date of November 2, 1937, you requested ten additional days within which to advise this office of your intentions relative to this matter.

Since no further correspondence has been received from you relative to this matter, nor any additional evidence submitted in support of your contentions, it is assumed that you do not care to pursue the matter further.

Your claim is accordingly rejected in full. You should communicate with the collector of internal revenue for your district with the view of settling your outstanding liability represented by the amount claimed.

Respectfully,

Guy T. Helvering,
Commissioner.

By:

D. S. Bliss,
Deputy Commissioner.

[fol. 720] EXHIBIT 49

Champlin Refining Company

Balance Sheet — December 31, 1940

Assets			
Cash		82,192.31	
Accounts Receivable	530,623.04		
Notes Receivable	176,293.58		
		706,916.62	
Inventories		3,297,522.80*	
Stocks and Bonds		579,703.61	
Producing Leases & Royalties	4,836,476.13		
Drilling Tools	400,635.93		
Undeveloped Oil Properties	461,698.72		
		5,698,810.78	
Refining Plant		5,142,111.70**	
Tank Cars		1,285,768.83	
Gasoline Pipe Line		3,198,028.66	
Sales Stations and Equipment		4,079,458.86	
Motor Equipment		64,213.47	
General Office		276,035.66	
Other Fixed Assets		326,671.62	
Prepaid and Deferred		389,785.80	
Total Assets			25,127,220.72
Liabilities			
Accounts Payable		493,864.56	
Notes Payable		850,000.00	
Reserved for Taxes		218,984.25	
Other Accrued Liabilities		24,113.14	
Contingent Liabilities		76,176.66	
Reserve for Bad Debts	212,700.95		
Reserve for Depreciation & Depletion	13,311,281.65		
Capital Stock	2,264,285.09		
Surplus	7,675,814.42	23,464,082.11	
Total Liabilities			25,127,220.72

Note: * Inventories were valued at cost or market whichever was lower and included: (A) 35,301,015 gallons of refined products having a total value of $821,063.13 in storage at the Enid Refinery; (B) 20,953,278 gallons of refined products having a total value of $690,383.44 in storage at or in transit to the 3 pipe line terminals; (C) 71,254 gallons of refined products having a total value of $8,646.27 in warehouses at the 3 pipe line terminals after transportation thereto by rail or truck; (D) 2,220,294 gallons of refined products having a total value of $439,215.14 in bulk plants and retail stations; (E) 1,071,045 barrels or crude oil having a total value of $1,152,601.26; and (F) drums, cans, containers and warehouse supplies of a total value of $185,613.56.

** Refinery investment totaling $5,142,111.70 included the cost of: (G) a complete refinery having a total capacity of 16,000 barrels (42 gallons) of crude oil daily; (H) crude oil storage tanks having a total capacity of 1,395,000 barrels; (I) storage tanks for refined products of a total capacity of 1,313,000 barrels; and (J) loading racks capable of accommodating 102 tank cars and 6 transport trucks at one time, all situated at the Enid Refinery.

*** The investments in producing leases, undeveloped leases, tank cars, gasoline (or products) pipe line, sales stations, and motor equipment were explained in the testimony of G. E. Leverton (Rec. pages 11-13) and are not again explained here.

I hereby certify that the foregoing balance sheet conforms to the books and records as of December 31, 1940.

.....

Secretary-Treasurer

[fol. 721] EXHIBIT 50

Valuation 1980

At a Session of the Interstate Commerce Commission, Division 2, held at its office in Washington, D. C., on the 17th day of March, A. D. 1941.

Clyde B. Aitchison, Walter M. W. Splawn, J. Haden Alldredge, Commissioners.

Recommendation made by Director Lewis in memorandum of Feb. 7, 1941, to Commissioner Miller, that the bureau of valuation proceed against either the Champlin Refining Company or the Standard Oil Company of Indiana in such manner as will bring before the Commission the question of jurisdiction under section 19a for the purposes of a test case, approved, Commissioner Splawn voting in the negative.

[fol. 722] INTERSTATE COMMERCE COMMISSION

Valuation Docket No. 1267

Champlin Refining Company, Valuation of Pipe Line

Submitted May 20, 1942. Decided Dec. 14, 1942

The Champlin Refining Company found to be engaged in the transportation of petroleum products, by pipe line in interstate commerce, and subject to the provisions of the Interstate Commerce Act.

Harry O. Glasser and Samuel H. Horne for petitioner.

REPORT OF THE COMMISSION

Division 2, Commissioners Aitchison, Splawn, and Alldredge

By DIVISION 2:

On May 15, 1941, we served upon the Champlin Refining Company, hereinafter called the Champlin, copies of valuation orders Nos. 26 and 27, together with instructions and

sample notes pertaining to the preparation and filing by common carriers by pipe line of information necessary for our use in the valuation of their pipe-line properties. On July 18, 1941, the Champlin filed a report in purported compliance with these valuation orders. On July 22, 1941, that report was returned to the Champlin with the advise that such a report could not be considered as in compliance with the valuation orders, and additional copies of valuation orders Nos. 26 and 27 were forwarded to the Champlin. Subsequently, the Champlin filed a petition which, as later amended, alleges, among other things, that the petitioner is not a common carrier and is not engaged in transportation within the meaning of the Interstate Commerce Act and asks that its status be determined. A hearing was held on the petition, briefs have been filed, and oral argument heard.

The Champlin is a corporation of the State of New Mexico authorized by its charter to produce, buy, sell, and transport petroleum, to refine petroleum, and to buy, sell, and deal in the refined products of petroleum. As of the date of the hearing, it owned the various properties enumerated in footnote 1.[1] The pipe line which the Champlin

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[1] (1) Approximately 149 oil wells on 53 leases in Oklahome; 45 wells on 13 leases in Kansas, and 52 wells on 10 leases in Texas; (2) approximately 75,000 acres of undeveloped leases situated in Oklahoma, Kansas, Texas, New Mexico, Alabama, and Illinois; (3) an oil refinery at Enid, Okla., which processes approximately 4½ million barrels of crude oil annually, producing a complete line of refined oil products; (4) all of the stock of the Cimarron Valley Pipe Line Company which owns and operates approximately 450 miles of gathering lines used principally to transport the crude produced or purchased by the company from oil leases in Oklahoma to the Enid refinery; (5) 723 tank cars used to transport the products of the refinery to company bulk plants or to jobbers located in Oklahoma, Kansas, Colorado, Wyoming, North Dakota, South Dakota, Nebraska, Minnesota, Wisconsin, Iowa, Illinois, Missouri, Texas, and other States; (6) approximately 316 filling stations and 248 gasoline and oil bulk plants; (7) the products pipe line which is the subject of this report; (8) 5 motortrucks used to transport products

[fol. 723] owns and operates is a 516-mile gasoline pipeline system, consisting of welded 6-inch pipe extending from Enid, Okla., to Champlin, near Rock Rapids, Iowa. In connection with the pipe line, the Champlin operates terminals with storage tanks as well as railroad and truck delivery facilities at Hutchinson, Kans., Superior, Nebr., and Rock Rapids. The construction of the portion of the pipe line from Enid through Hutchinson to Superior, 256 miles, and of the terminal facilities at Hutchinson and Superior, was completed in June 1935. The portion of the pipe line from Superior to Rock Rapids, 260 miles, and the terminal facilities at the last-named point were completed in May 1940. Storage facilities have been provided at the terminal stations with approximate capacities as follows: At Hutchinson, 161,000 barrels; at Superior, 191,000 barrels; and at Rock Rapids, 330,000 barrels. The total cost of the pipe line and appurtenant facilities as of December 31, 1940, was $3,189,028.66.

For some years prior to 1935, the business of the Champlin showed a steady decline, because the construction of refineries in areas near former markets and the operation of pipe lines, barge lines, and transport trucks provided sources of supply near many customers, all of which was destructive of trade connections of the Champlin in the territory thus affected. The construction of the pipe line resulted in an upward trend in business of the Champlin so that by 1940 the company had reached a volume of business equal to the peak previously enjoyed. That the Champlin meets keen competition in the territory served

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from storage at Rock Rapids, Iowa, to points in that and other States, 3 trucks used to transport lubricating oil from the Enid, Okla., refinery to the warehouses at the Hutchinson, Kans., Superior, Nebr., and Rock Rapids, Iowa, pipe-line terminals, as well as Lincoln and Grand Island in Nebraska, and Denver in Colorado and various points in Kansas, 18 trucks used in the operation of the products pipe line and the operation and development of oil leases in Oklahoma, Kansas, and Texas, most of which occasionally transport materials for construction, operation, and maintenance from one State to another; and (9) various other equipment used to promote the producing, purchasing, and refining of crude oil and the marketing of the products thereof.

is indicated by the fact that for the first 6 months of 1941 the total sales of the Champlin in the States of Colorado, Kansas, Nebraska, Iowa, Minnesota, and South Dakota, which are served by the pipe line, equaled 3.5 percent of the whole business of the petroleum industry in those States. This comparison is based on information furnished to the Champlin by the tax-collection officials of the respective States.

Construction of the portion of the pipe line from Enid to Superior was undertaken by the Cimarron Valley Pipe Line Company, hereinafter referred to as the Cimarron [fol. 724] Valley, which was then a common carrier operating wholly in the State of Oklahoma and a wholly owned subsidiary of the Champlin. The original purpose was to construct and operate a common-carrier pipe line, and a certificate to that effect was issued to the Cimarron Valley by the State of Kansas. In connection with the acquisition of right-of-way for this construction, the Cimarron Valley had instituted four condemnation suits against seven individuals in separate district courts in the State of Kansas. When the line was nearing completion but before it was put into operation, a change in plans was decided upon which would eliminate the Cimarron Valley from operation outside of the State of Oklahoma in order that the Champlin might complete construction of the line and operate it as a private-products line without assuming any of the burdens of a common carrier. On June 10, 1935, the Cimarron Valley executed a bill of sale to the Champlin and made assignment of all rights-of-way that had been acquired in the construction of the property transferred to the Champlin. The four condemnation suits were dismissed, and satisfactory settlements made with the contesting land owners. Since that time, the Cimarron Valley has had nothing to do with the further construction or operation of the Champlin.

The crude oil from which the products transported by the Champlin are produced is all originated in the State of Oklahoma and transported to the refinery at Enid by the Cimarron Valley. All of the petroleum products transported through the line are owned by the Champlin. The products are transported beyond the terminals either by rail or by common- or contract-carrier trucks to dealers and distributors. The Champlin operates five 3,750-gallon capacity transport trucks from the Rock Rapids terminals

by which deliveries are made to company-owned outlets in north central Iowa and southern Minnesota, and to jobbers and dealers in the same territory. Other transport trucks, not owned, are employed by the Champlin to haul refined products from the refinery and the 3 terminals of the pipe line to the 248 bulk plants owned. From these bulk plants, local dealers and consumers are served by tank wagons owned and operated by the Champlin. The Champlin operates approximately 316 retail filling stations in the territory served by the pipe line. The products are marketed at the terminals, sometimes by contract running for a definite period, at a delivered price which in addition to the f.o.b. charge at the Enid refinery includes a charge, called a differential, fixed at a sum which enables the Champlin to deliver these products at the pipe-line terminal at a price which, added to the transportation costs beyond the terminal, equals the costs at the jobber's place of business of like products sold by competitors of the Champlin in the territory served. In other words, the so-called differential is adjusted so that the through charge [fol. 725] to the final transportation destination of the product will equal the cost of the product at the refinery plus the through transportation cost from the refinery by rail, or other means, to final destination. The differential, therefore, represents the charge assessed by the Champlin for transporting petroleum products through its pipe line from the refinery to the pipe-line terminal. Numerous adjustments have been made in the differentials from time to time as developments in the competitive situation made such changes necessary or expedient.

In disposing of the petroleum products produced by it at its refinery at Enid, the Champlin uses two types of sales; one is known as the spot-market or date-of-shipment sale, and the other, or contract sale, is based on yearly contracts with its customers. The spot price of the product at Enid is normally based upon the Chicago Journal of Commerce "Group 3" (Oklahoma) prices as shown in the issue of the Thursday preceding date of shipment. These prices are made effective at 7 a. m. Friday morning and remain in force until the next succeeding Friday, or until a change is made in the Chicago Journal of Commerce price for the particular product. The contract sales cover sales made to jobbers to cover their anticipated requirements for a specified or definite length of time. These

contracts are made in writing, and the record contains copies of the various forms of such contracts and accompanying papers necessary to show a complete transaction. Other sales are made to competing refiners and to brokers, and in these instances the contracts are the same as those made with the jobbers, except that the base or "Group 3" price is reduced so that the refiners and brokers are enabled to retain a commission and still sell the product at the delivered price prevailing in the competitive market.

The practical working out of the sales methods utilized by the Champlin may be described by the following facts presented for the record. On January 18, 1941, the Champlin entered into a contract with the Farmers Union Co-op. Supply Company, of Beatrice, Nebr., calling for the delivery by the Champlin of a maximum of 765,000 gallons of petroleum products named in the contract, at prices therein agreed upon, during the period of 1 year beginning February 4, 1941. A shipment of a tank-car load of gasoline from the Superior terminal of the Champlin is indicative of the carrying out of this contract. This car contained 8,110 gallons of gasoline weighing 53,526 pounds and moved from Superior, October 11, 1941, destined to Beatrice, routed C. B. & Q. to Fairbury, Nebr., and C. R. I. & P. to destination, at a rate of 10.5 cents per 100 pounds, indicating a charge of $56.21 for the rail portion of the transportation, to be paid by the consignee direct to the railroads. The invoice of the Champlin to the consignee contains the following charges: $496.74, the cost at Enid of [fol. 726] 8,110 gallons of the particular type of gasoline at the base price of $0.06125 per gallon; $121.65 Federal tax at the rate of 1.5 cents per gallon; and $81.10, the so-called differential, which in this instance equaled 1 cent per gallon. The total charge made by the Champlin for this carload of gasoline was $699.49. The item of $81.10 was described by a witness for the Champlin as representing the difference between the through railroad freight rate from Enid to Beatrice and the rail charge from Superior to Beatrice and was the total charge made by the Champlin for transporting this gasoline from Enid, including handling and all other items that go into the movement from the refinery to the pipe-line terminal at Superior.

Summarizing these matters as of the date of the hearing, it appears that the Champlin is the sole owner of the products transported through its pipe line; it has never

transported any products belonging to any other company; its pipe line has no connection with any other pipe line; there is no point at which any petroleum product can be put into the line other than at the Enid refinery; delivery of the products at the three terminal points is made from the storage tanks by means of truck racks or railroad tank-car racks and is not directly from the pipe line in any instance; no tariffs have been filed with this Commission or with any State commission or regulatory body; and the right of eminent domain has never been assumed or exercised by the Champlin in connection with this pipe line. Upon these facts, the Champlin contends that its products line is a private pipe line devoted to its own use, that it is not a common carrier as defined in section 1 of the Interstate Commerce Act, and that the use to which the pipe line is subjected by petitioner is not impressed with a public interest in any manner whatsoever. The evidence of record as outlined herein shows that the Champlin is a fully integrated oil company owning and operating, either directly or through its subsidiary the Cimarron Valley, every facility necessary for the production and the transportation of crude oil by pipe line, the refining of such crude oil, the transportation by pipe line of the products of its refinery, and the distribution thereof either through jobbers or directly to the consuming public.

In *Valvoline Oil Co. Petition in Valuation of Pipe Lines*, 47 Val. Rep. 534, division 1 described the legislative development of our jurisdiction over transportation of oil by pipe lines as follows at pages 535-536:

> Persons or corporations engaged in the interstate transportation of oil by means of pipe lines were first brought within our jurisdiction by the Hepburn Act of June 29, 1906. By that act the provisions of section 1 of the Act to Regulate Commerce were made applicable to "any corporation or any person or persons engaged in the transportation of oil or other commodity except water and except natural or artificial gas, by means of pipe lines, [fol. 727] or partly by pipe lines and partly by railroad, or partly by pipe lines and partly by water, who shall be considered and held to be common carriers within the meaning and purpose of this Act." Except for minor revisions in the language, the provisions affecting pipe-line com-

panies remain unchanged by subsequent amendments. Section 1 of the act, as now in effect, reads in part as follows:

(1) That the provisions of this part [Part I] shall supply to common carriers engaged in——

(b) The transportation of oil or other commodity, except water and except natural or artificial gas, by pipe line, or partly by pipe line and partly by railroad or by water; * * * from one State * * * to any other State * * *.

(3) The term "common carrier" as used in this part shall include all pipe line companies; * * *.

The same language is continued in the act as now in effect. In *Valvoline Oil Co.* v. *United States*, 308 U. S. 141, the Supreme Court said "In the present act there is a change of language, but we perceive none in meaning." In that decision, the Supreme Court affirmed on appeal a final decree of a three-judge district court for the Western District of Pennsylvania, dismissing a petition to enjoin and annul an order of this Commission made after determination by us that the Valvoline Oil Company is engaged in the transportation of oil by pipe line in interstate commerce and that it is a common carrier subject to the provisions of the Interstate Commerce Act.

Following the passage of the Hepburn Act and in view of conditions then existing, we instituted an investigation on our own motion into the rates, classifications, regulations, and practices of pipe-line companies. *In the Matter of Pipe Lines*, 24 I. C. C. 1. After full investigation, we concluded that it was clearly the intention of Congress to convert all interstate pipe lines into common carriers. Consequently, certain pipe-line companies were ordered to file schedules of rates and charges for the interstate transportation of oil, in compliance with the provisions of the act. Some of these companies brought suit in the Commerce Court to set aside and annul our order on the ground, among others, that Congress had exceeded its constitutional powers in declaring persons or corporations using pipe lines in transporting their own oil to be common carriers. The Commerce Court held the statute to be unconstitutional in that it applied to every pipe line that crossed a State bound-

ary and issued a preliminary injunction. *Prairie Oil & Gas Co.* v. *United States,* 204 Fed. Rep 798. Upon appeal to the Supreme Court of the United States, the decision of the Commerce Court was reversed except as to the Uncle Sam Oil Company. *Pipe Line Cases,* 234 U. S. 548..

Counsel for the Champlin stated at the argument herein that he would concede that Congress has the power to make any kind of a pipe line, that crosses a State line, a common carrier. Arguments were advanced, however, to support the view that Congress has not yet acted to so classify privately operated products pipe lines such as that owned [fol. 728] and operated by the Champlin. One basis for this position is the use of the word "oil" in section 1 (1) (b) of the act, quoted above, which the Champlin interprets to mean crude oil, and not kerosene or gasoline, because at the time the statute was passed and at the time the decisions (in *Pipe Line Cases, supra*) were written there was no such thing as a kerosene pipe line, nor was there any such idea as transporting gasoline by a privately owned pipe line. This argument fails to give proper significance to the words "or other commodity," following "oil" in the pararaph quoted. These words would seem to be all inclusive of commodities that may be transported by pipe line other than water and natural or artificial gas, which are specifically excluded. That such was the intent of Congress is borne out by the fact that, although the interstate Commerce Act has been amended several times in recent years, this language in section 1 has remained unchanged, though the Congress must be presumed to have been aware of the changes in the petroleum industry which resulted in the transportation of petroleum products by pipe line.

The Champlin contends that it is not subject to the act because it is not a pipe-line company; that to be a pipe-line company the operation of the pipe line must constitute the principal portion of its business; and that the operation of its products line is incidental to its other operations and simply a means of marketing its refined products. In other words, the Champlin takes the position that it is operating a privately owned products line carrying its own product from one storage tank to another storage tank. In this connection we refer again to the quotation above from the decision of the Supreme Court in *Valvoline Oil Co.* v. *United States, supra*: The charter of the Champlin authorizes it to transport petroleum and its products, and, by performing

that transportation by means of a pipe line that crosses State lines, it becomes a pipe-line company within the meaning of the act.

The Champlin stresses the fact that it transports through its pipe line only its own products, and argues therefore that it is operating a private pipe line which comes within the principal of the Uncle Sam Oil Company as stated in *Pipe Line Cases, supra.* The Supreme Court there said:

When, as in this case, a company is simply drawing oil from its own wells across a state line to its own refinery *for its own use, and that is all*, we do not regard it as falling within the description of the act, the transportation being merely an incident to use at the end. [Emphasis supplied.]

Here the products are not being transported for the Champlin's own use. The products are transported for sale, and the sales are consummated by contract or by "spot" orders and delivery made at either of the terminals out of products already transported to those points and [fol. 729] stored there for that purpose. In *Pipe Line Cases, supra,* the Supreme Court said:

That the transportation is commerce among the States, we think clear. That conception cannot be made wholly dependent upon technical questions of title, and the fact that the oils transported belonged to the owner of the pipe line is not conclusive against the transportation being such commerce.

The conclusion that the transportation here considered is interstate commerce is strengthened by the decision of the Supreme Court in *Federal Power. Comm.* v. *Natural Gas Pipeline Co.*, 315 U. S. 575, decided March 16, 1942, where the Court said:

The sale of natural gas originating in one state and its transportation and delivery to distributors in any other state constitutes interstate commerce, which is subject to regulation by Congress.

And in *Valvoline Oil Co.* v. *United States, supra,* the Court said:

Whether the oil so owned and transported was ultimately used by the carrier in its own operations or sold to others

was in this connection immaterial. Certainly one would find a public interest in the sole means of transporting this commodity from thousands of wells for thousands of producers.

Here we have the reverse of the situation in the *Valvoline Oil Co. case, supra,* in that the transportation is from one producer to thousands of consumers, but the principles of interstate commerce and the public interest are in all essentials the same. The Champlin relies upon certain language of the Supreme Court in *Producers Transp. Co.* v. *Railroad Comm. of California,* 251 U. S. 228, as applying to the pipe line it operates. We considered the same language in *Valvoline Oil Co. Petition in Valuation of Pipe Lines, supra,* where we said at page 539:

The constitutionality of the statute and the validity of the order in that case were upheld. The decision does not differ in principle from *The Pipe Line Cases.* Carriage for the public was the governing factor in both cases.

Here, also, carriage for the public is the governing factor, and counsel for the Champlin have advanced no argument to overcome the fact that the pipe line which it operates is utilized by it for the transportation in interstate commerce of petroleum products, for distribution to the general public in the territory which it serves. Such pipe lines are made common carriers by the Interstate Commerce Act.

We find that the Champlin Refining Company is engaged in the transportation of refined petroleum products by pipe line in interstate commerce, and that it is a common carrier subject to the provisions of the Interstate Commerce Act. It should therefore comply with our valuation orders which have been served upon it and furnish promptly the information called for therein. No further order is required at this time.

Endorsed: Filed in District Court on Oct. 3, 1944.

[fol. 730] BEFORE INTERSTATE COMMERCE COMMISSION

Valuation Docket No. 1267

Valuation of Pipe Line of Champlin Refining Company

ORDER REOPENING PROCEEDING—April 5, 1943

Upon further consideration of the record in the above entitled proceeding, and upon consideration of petition of Champlin Refining Company for rehearing, reargument and reconsideration:

It is Ordered, That this proceeding be, and it is hereby, reopened for reargument and reconsideration, and the petition denied as to rehearing.

By the Commission.

W. P. Bartel, Secretary. (Seal.)

[fol. 731] INTERSTATE COMMERCE COMMISSION

Valuation Docket No. 1267

Champlin Refining Company, Valuation of Pipe Line

[fol. 732] Valuation Docket No. 1267

Champlin Refining Company, Valuation of Pipe Line

Submitted June 1, 1943. Decided June 12, 1944

Upon further consideration finding in original report, 49 Val. Rep. 463, that the Champlin Refining Company is engaged in the transportation of refined petroleum products by pipe line in interstate commerce, and that it is a common carrier subject to the provisions of the Interstate Commerce Act, affirmed.

Additional appearance: J. V. Norman for petitioner.

REPORT OF THE COMMISSION ON REARGUMENT

By the COMMISSION:

In the original report in this proceeding, 49 Val. Rep. 463, division 2 found that the Champlin Refining Company, hereinafter generally referred to as the Champlin, is engaged

in the transportation of refined petroleum products by pipe line in interstate commerce, and that it is a common carrier subject to the provisions of the Interstate Commerce Act. No order was entered, but the Champlin was directed to comply with orders under section 19a of the act, previously served upon it, and to furnish promptly the information called for therein. Such information is required for our use in valuing the properties of common carriers by pipe line. The Champlin thereupon filed a petition for rehearing, reargument, and reconsideration. The petition was granted, except as to rehearing, and reargument was heard.

There is no dispute as to the statements of fact in the original report, but they will be repeated here in sufficient detail to furnish a clear understanding of the jurisdictional question which was the basis of the reargument. It is the position of the Champlin that, granting the facts to be as stated, it is not a pipe-line company as that term is defined in the Interstate Commerce Act; it is not engaged, in the operation of its pipe line, in interstate commerce as that term is defined in the Interstate Commerce Act; and it is not a common carrier.

The Champlin is a corporation of the State of New Mexico, authorized by its charter to produce, buy, sell, and transport petroleum, to refine petroleum, and to buy, sell, and deal in the refined products of petroleum. The pipe line which the Champlin owns and operates is a 516-mile [fol. 733] gasoline pipe-line system consisting of welded 6-inch pipe extending from Enid, Okla., to Rock Rapids, Iowa. In connection with the pipe line, the Champlin operates terminals with storage tanks as well as railroad and truck delivery facilities at Hutchinson, Kans., Superior, Nebr., and Rock Rapids. The construction of the portion of the pipe line from Enid through Hutchinson to Superior, 256 miles, and the terminal facilities at Hutchinson and Superior, was completed in June 1935. The portion of the pipe line from Superior to Rock Rapids, 260 miles, and the terminal facilities at Rock Rapids were completed in May 1940. Storage facilities have been provided at the terminal stations with approximate capacities as follows: At Hutchinson, 161,000 barrels; at Superior, 191,000 barrels; and at Rock Rapids, 330,000 barrels. The total cost of the pipe line and appurtenant facilities as of December 31, 1940, was $3,189,028.66.

The Champlin also operates oil wells, an oil refinery, tank cars, filling stations, gasoline and oil bulk plants, oil trucks, and other equipment, all more specifically described and enumerated in the original report. It also owns all of the stock of the Cimarron Valley Pipe Line Company which owns and operates approximately 450 miles of crude oil gathering lines in the State of Oklahoma, the principal source of crude oil for the Champlin's refinery at Enid.

In disposing of the petroleum products produced by it at its refinery at Enid, the Champlin uses two types of sales; one is known as the spot-market or date-of-shipment sale, the other, or contract sale, is based on yearly contracts with its customers. The spot, or f. o. b., price of the product at Enid is normally based upon the Chicago Journal of Commerce "Group 3" (Oklahoma) prices as shown in the issue of the Thursday preceding date of shipment. These prices are made effective at 7 a. m. Friday morning and remain in force until the next succeeding Friday, or until a change is made in the Chicago Journal of Commerce price for the particular product. The delivered price includes, in addition to the spot or f. o. b. charge at the Enid refinery, a charge called a differential which is adjusted so that the through charge to the final transportation destination of the product will equal the cost of the product at the refinery plus the through transportation cost from the refinery by rail, or other means, to final destination. The differential, therefore, represents the charge assessed by the Champlin for transporting petroleum products through its pipe line from the refinery to the pipe-line terminal.

The contract sales are described in the original report by the following typical example:

On January 18, 1941, the Champlin entered into a contract with the Farmers Union Co-op. Supply Company of Beatrice, Nebr., calling for the delivery by the Champlin of a maximum of 765,000 gallons of petroleum products named [fol. 734] in the contract, at prices therein agreed upon, during the period of 1 year beginning February 4, 1941. A shipment of a tank-car load of gasoline from the Superior terminal of the Champlin is indicative of the carrying out of this contract. This car contained 8,110 gallons of gasoline weighing 53,526 pounds and moved from Superior, October 11, 1941, destined to Beatrice, routed C. B. & Q. to Fairbury,

Nebr., and C. R. I. & P. to destination, at a rate of 10.5 cents per 100 pounds, indicating a charge of $56.21 for the rail portion of the transportation, to be paid by the consignee direct to the railroads. The invoice of the Champlin to the consignee contains the following charges: $496.74, the cost at Enid of 8,110 gallons of the particular type of gasoline at the base price of $0.06125 per gallon; $121.65 Federal tax at the rate of 1.5 cents per gallon; and $81.10, the so-called differential, which in this instance equaled 1 cent per gallon. The total charge made by the Champlin for this carload of gasoline was $699.49. The item of $81.10 wa sdescribed by a witness for the Champlin as representing the difference between the through railroad freight rate from Enid to Beatrice and the rail charge from Superior to Beatrice and was the total charge made by the Champlin for transporting this gasoline from Enid, including handling and all other items that go into the movement from the refinery to the pipe-line terminal at Superior.

The facts were summarized in the original report in the following language:

Summarizing these matters as of the date of the hearing, it appears that the Champlin is the sole owner of the products transported through its pipe line; it has never transported any products belonging to any other company; its pipe line has no connection with any other pipe line; there is no point at which any petroleum product can be put into the line other than at the Enid refinery; delivery of the products at the three terminal points is made from the storage tanks by means of truck racks or railroad tank-car racks and is not delivered directly from the pipe line in any instance; no tariffs have been filed with this Commission or with any State commission or regulatory body; and the right of eminent domain has never been assumed or exercised by the Champlin in connection with this pipe line.

Considering first the status of the Champlin as a pipe-line company. It is clearly shown by the record that the Champlin is a fully integrated oil company owning and operating, either directly or through its subsidiary the Cimarron Valley Pipe Line Company, every facility necessary for the production and the transportation of crude oil by pipe line, the refining of such crude oil, the transportation by pipe line of the products of its refinery, and the dis-

tribution of the products through jobbers, or directly, to the consuming public.

The Champlin bases its contention that it is not a pipe-line company on the theory that such a company is one whose principal business is the operation of a pipe line. The analogy is drawn that an express company or a sleeping-car company is recognized as being principally engaged in the operation of either express cars or sleeping cars. Also that as the Champlin operates a great many trucks it could as well be called a truck company. The limitation which the [fol. 735] Champlin would place upon the phrase "pipe-line company" is dispelled by general usage of the word "company" and by the evident purport of the language of the Interstate Commerce Act as interpreted by the Supreme Court. In *Valvoline Oil Co.* v. *United States*, 308 U. S. 141, in considering the applicability of the act to the pipe-line department of the Valvoline Oil Co., which uses its pipe line to transport crude oil to its refinery, the Supreme Court said "There is no controversy over whether appellant is an interstate pipe line company. Obviously it is."

Webster's New International Dictionary defines "Company" as "an association of persons for a joint purpose or performance, especially for carrying on a commercial or industrial enterprise or business." In a fully integrated oil business, such as that which the Champlin operates, the association of persons which constitutes the organization is engaged in a variety of enterprises, and the word "company" as applied to it has many meanings. It is unquestionably an oil company as it deals in nothing but petroleum oil and the products thereof. Its corporate title stamps it as a refining company. Its charter authorizes the Champlin to transport petroleum oil and petroleum products, and it has elected to perform the major part of such transportation of petroleum products by the pipe line which is the subject of this proceeding. As this pipe line crosses several State lines and carries petroleum products moving in interstate commerce, as more fully discussed hereinafter, the Champlin is a pipe-line company within the meaning of the Interstate Commerce Act.

The Champlin would have us hold that in the operation of its pipe line it is not engaged in interstate commerce, because the products transported through the pipe lines are owned by the Champlin and that this operation comes within the principle of the Uncle Sam Oil Company, as stated in

Pipe Line Cases, 234 U. S. 548. The Supreme Court there said:

> That the transportation is commerce among the States we think clear. That conception cannot be made wholly dependent upon technical questions of title, and the fact the oils transported belonged to the owner of the pipe line is not conclusive against the transportation being such commerce.

And in *Federal Power Comm.* v. *Natural Gas Pipeline Co.*, 315 U. S. 575, the Supreme Court said:

> The sale of natural gas originating in one state and its transportation and delivery to distributors in any other state constitutes interstate commerce, which is subject to regulation by Congress.

In distinguishing the status of the Uncle Sam Oil Company, the Supreme Court, in *Pipe Line Cases, supra*, used this language:

> When, as in this case, a company is simply drawing oil from its own wells across a state line to its own refinery [fol. 736] *for its own use, and that is all*, we do not regard it as falling within the description of the act, *the transportation being merely an incident to use at the end.* [Italics supplied.]

The Champlin does not in any way come within the principle there announced. There is no contention that the Champlin transports the products of its refinery for its own use. The products are made for sale to the general public in many States. In the case of contract sales, of which the example hereinbefore given is typical, the interstate destination is known when the product leaves the refinery at Enid, and the transportation through the pipe line is an incident to service for the general public. In the case of "spot" sales, the same service has been performed before the actual sale is made at the pipe-line terminals.

The Champlin takes the position that the question of whether or not the transportation here involved is transportation within the meaning of the act is conclusively determined by the decision of the Supreme Court in *Pennsylvania R. Co.* v. *Public Utilities Comm. of Ohio*, 298 U. S. 170, called herein the *Negley case*. The facts upon which that decision was based were, briefly, these: The Pittsburgh Coal Company transported coal from its mines in Pennsyl-

vania in its own barges, towed by its own tug boats, over the Monongahela and Ohio Rivers to Smith's Ferry, Pa. There the coal was transferred to rail cars owned by the coal company and taken over its own railroad to Negley, Ohio, where it was washed, freed from foreign matter, and broken up or assorted into desired sizes. As the Supreme Court said, "Then for the first time it is ready for shipment to fill specific orders, * * *." The coal which was considered in that proceeding was shipped by common-carrier railroads from Negley to Youngstown, Ohio.

The issue in the *Negley case* was stated by the Supreme Court as follows:

The question for us here is not whether the movement of the coal is to be classified as commerce or even as commerce between states. The question is whether it is that particular form of interstate commerce which Congress has subjected to regulation in respect of rates by a federal commission. The Interstate Commerce Act (49 U. S. C. § 1, et seq.) is aimed at common carriers exclusively (§ 1 (1); (3)), and not even at all these.

The Court further said that in determining the application of the Interstate Commerce Act to interstate commerce "Transportation begins for that purpose, if not for others, when the merchandise has been placed in the possession of a carrier." The act defines the word "carrier" as used therein to mean "common carrier."

The Court held in the *Negley case* as follows:

The only transportation of this coal by a common carrier of merchandise either by railroad or by water was intra- [fol. 737] state transportation in Ohio between Negley and Youngstown. The transportation between Pennsylvania and Ohio was by the owner, who was not a common carrier, but furnished implements of carriage for its own use exclusively.

In the present proceeding the preliminary transportation comparable to that in the *Negley case* up to Negley, is that performed by the Cimarron Valley Pipe Line Company in bringing the crude petroleum to the refinery at Enid. Then, after the crude oil is refined, for the first time the products are ready for shipment to fill specific orders. Then these products are placed in the possession of a carrier by pipe line, not for delivery in the same State as in the *Negley case*,

but for carriage over several State lines for delivery in numerous States. In *Pipe Line Cases, supra,* and in *Valvoline Oil Co.* v. *United States, supra,* similar transportation of crude oil by pipe line was held to be interstate commerce. Also it is a form of interstate commerce which Congress has subjected to regulation by this Commission, as more fully discussed hereinafter.

Viewing the facts presented in this record, in the light of the expressions of the Supreme Court, it is clear that the transportation of petroleum products by the Champlin by means of the pipe line here considered is interstate commerce.

With regard to its common-carrier status, the Champlin takes the position that the Interstate Commerce Act, as interpreted by the decisions of the Supreme Court, makes common carriers only of those pipe lines that are in substance common carriers. Accepting as sound the statement in the original report that "carriage for the public is the governing factor," the Champlin contends that the carriage here under consideration is not such carriage.

By the Hepburn Act of June 29, 1906, the provisions of section 1 of the Act to Regulate Commerce were made applicable to—

any corporation or any person or persons engaged in the transportation of oil or other commodity except water and except natural or artificial gas, by means of pipe lines, or partly by pipe lines and partly by railroad, or partly by pipe lines and partly by water, who shall be considered and held to be common carriers within the meaning and purpose of this Act.

Except for minor revisions in the language, the provisions affecting pipe-line companies remain unchanged by subsequent amendments. Section 1 of the act, as now in effect, reads in part as follows:

(1) That the provisions of this part [Part I] shall apply to common carriers engaged in—

* * * * * * *

(b) The transportation of oil or other commodity, except water and except natural or artificial gas, by pipe line, or partly by pipe line and partly by railroad or by water; * * * from one State * * * to any other State * * *.

[fol. 738] (3) (a) The term "common carrier" as used in this part hall include all pipe-line companies; • • •.

Giving consideration to the Hepburn amendment of the act in *Pipe Line Cases, supra,* the Supreme Court said with relation to the pipe-line carriers there considered:

As applied to them, while the amendment does not compel them to continue in operation, it does require them not to continue except as common carriers.

And in the same decision the Court said:

So far as the statute contemplates future pipe lines and prescribes the conditions upon which they may be established there can be no doubt that it is valid.

More than 20 years had passed after that decision was rendered before the pipe line of the Champlin was constructed. These conclusions of the Supreme Court were set out in the decision cited after the Court had in the same decision construed the language of the statute as amended by the Hepburn Act to constitute "an injunction that those in control of pipe lines and engaged in the transportation of oil shall be dealt with as" common carriers. And as stated before herein, the Supreme Court has held that a subsequent change in language has not changed the meaning of the act.

There is little ground for the argument that the carriage by pipe line here considered is not carriage for the public. In *Valvoline Oil Co. v. United States, supra,* comparing the Uncle Sam Oil Company with Valvoline, the Supreme Court said "Here, however, it is the purchase from many sources and subsequent carriage that determine the applicability of the statute to Valvoline." In other words, carriage for the public distinguished the Valvoline from the Uncl- Sam Oil Company which carried only for itself. In the case of the Champlin, the act of carriage precedes the distribution to the public of the product carried. The record is clear that the Champlin is willing to sell its products to any part of the consuming public that can avail itself of the Champlin's facilities, provided the purchaser will agree to pay to the Champlin, under contract or spot sales, the so-called differential as compensation to the Champlin for transporting the product from Enid through the pipe line to the respective terminals. As previously described, the differential is the difference between the through railroad freight

rate from Enid to final destination and the rail charge from the pipe-line terminal to such destination. The differential is added to the cost of the product in the sale of all products transported through the pipe line. The carriage performed by the Champlin by means of the pipe line here considered is in all of its aspects carriage for the public.

[fol. 739] We find that the Champlin is a common carrier of refined petroleum products by pipe line and that it is subject to the provisions of the Interstate Commerce Act. The findings of division 2 in the original report are accordingly affirmed.

An order will be entered directing the Champlin to comply with the provisions of our valuation orders Nos. 26 and 27 previously served upon it in connection with proceedings under section 19a of the act, within 90 days from the date of service hereof. The date of valuation is hereby fixed as of December 31, 1943.

Chairman Patterson and Commissioner Porter dissent.

49 Val. Rep.

[fol. 740] BEFORE INTERSTATE COMMERCE COMMISSION

Valuation Docket No. 1267

Valuation of Pipe Line of Champlin Refining Company

ORDER—June 12, 1944

It appearing, That the Champlin Refining Company was duly served with copies of Valuation Orders Nos. 26 and 27, issued by this Commission, requiring the filing within a time specified of certain maps and information required for the valuation of its pipe-line property under section 19a of the Interstate Commerce Act:

It further appearing, That the Commission has made and filed a report finding that the Champlin Refining Company is a common carrier of refined petroleum products by pipe line and subject to the provisions of the Interstate Commerce Act, which said report is hereby referred to and made a part hereof;

It is ordered, That the said Champlin Refining Company comply with the provisions of said Valuation Orders Nos. 26 and 27, within 90 days from the date of service hereof and as of December 31, 1943.

By the Commission. W. P. Bartel, Secretary. (Seal.)

[fols. 741-743] BEFORE INTERSTATE COMMERCE COMMISSION

Valuation Docket No. 1267

Champlin Refining Company

ORDER DENYING REHEARING—July 26, 1944

Upon further consideration of the record in the above-entitled proceeding, and of petition of the Champlin Refining Company for rehearing and vacation of report and order of the Commision on reargument therein;

It is ordered, That the petition be, and it is hereby, denied.

By the Commission: W. P. Bartel, Secretary. (Seal.)

[fol. 744] IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF OKLAHOMA

No. 1559—Civil

[Title omitted]

PETITION FOR REHEARING—Filed April 12, 1945

Comes Now, The Champlin Refining Company, petitioner, and complaining of the failure of the court,

(*a*) to notice in the majority opinion of the court what it believes are controlling decisions of the Supreme Court of the United States in this litigation, *viz: Pennsylvania R. Co.* v. *Public Utilities Commission*, 298 U. S. 170, 80 L. ed. 1130; *Producers Transportation Co.* v. *R. R. Commission of California*, 251 U. S. 228, 64 L. ed. 239; *Atlantic Coast Line* v. *Standard Oil Co.*, 275 U. S. 257, 72 L. ed. 270; *General Oil Co.* v. *Crain*, 209 U. S. 211, 52 L. ed. 754, and *Williams* v. *Standard Oil Co.*, 278 U. S. 239, 73 L. ed. 207;

(*b*) for the further erroneous interpretation of the effect to be given the exception granted by Mr. Justice Holmes to the Uncle Sam Oil Company in the *Pipe Line Cases*, 234 U. S. 548, 58 L. ed. 1459;

(*c*) for erroneous interpretation of the uncontroverted facts in said litigation,

[fol. 745] and,

(*d*) erroneous conclusions of law generally, all of which will be noted, *infra*, herein;

the petitioner respectfully prays that it be granted a rehearing upon the issues so erroneously determined adversely to it.

In support of this petition for rehearing, the petitioner says:

I

That error is made in the conclusion expressed in the last sentence at the bottom of page 4 of the typewritten memoranda of Judge Chandler's majority opinion, as to a probable basis for Mr. Justice Holmes' exception to the

Uncle Sam Company in the *Pipe Line Cases, supra*, as follows:

> "The court also undoubtedly took into consideration the fact that the company, having entered the field as a purely private pipe line prior to the passage of the 1906 amendment and having vested rights, arbitrary classification of such line as a common carrier, would be unconstitutional."

Such conclusion is wholly unsupported by and is unwarranted within the text of Mr. Justice Holmes' decision.

Mr. Justice Holmes, in disposing of the Uncle Sam Oil Company, merely said:

> "• • • • • • •
>
> "There remains to be considered only the Uncle Sam Oil Company. This company has a refinery in Kansas and oil wells in Oklahoma, with a pipe line connecting the two which it has used for the sole purpose of conducting oil from its own wells to its own refinery. It would be a perversion of language, considering the sense in which it is used in the statute, to say that a man was engaged in the transportation of water whenever he pumped a pail of water from his well to his house. So as to oil. When, as in this case, a company [fol. 746] is simply drawing oil from its own wells across a state line to its own refinery, for its own use, and that is all, we do not regard it as falling within the description of the act, the transportation being merely an incident to use at the end. In that case the decree will be affirmed. In the others the decree will be reversed."

It is obvious that the opinion here attempts to read something into the context of Mr. Justice Holmes' opinion that is neither there, nor existent as a basis for what Mr. Justice Holmes said.

In the *Valvoline* case, 308 U. S. 141, 84 L. ed. 150, Mr. Justice Reed, having occasion to notice the Uncle Sam Oil Company exception to the rule announced against the major oil companies, in the *Pipe Line Cases, supra*, adversely disposed of the Valvoline contention as to its right to have the exception granted the Uncle Sam Oil Company allowed to

it in its operation of its crude oil gathering system lines, by saying:

"* * * * * * *

"The appellant relies upon the *Pipe Line Cases* to show that the present act does not cover a pipe line transporting oil for its own refining purposes only. The discussion referred to is that concerning the Uncle Sam Oil Company. But that company's pipe line was used for the 'sole purpose of conducting oil from its own wells to its own refinery.' This was held not to be transportation under the act. Here, however, it is the purchase from many sources and subsequent carriage that determine the applicability of the statute to Valvoline.

"* * * * * * *"

Nothing further was said in the *Valvoline* opinion, *supra*, with reference to the Uncle Sam Oil Company, or its operations, and the language there employed by Mr. Justice Reed was a recognition of approval of the language employed by Mr. Justice Holmes in the *Pipe Line Cases, supra*, in dealing [fol. 747] with the Uncle Sam Oil Company's interstate pipe line operations.

See, also, opinion of Circuit Court of Appeals for the Sixth Circuit, in *Pennsylvania R. Co.* v. *Pittsburgh L. & W. R. Co., et al.*, 83 F. (2d) 861, for its interpretation of the *Uncle Sam Oil Company* decision.

A photo copy of the transcript of the record, *United States of America, et al.*, v. *Uncle Sam Oil Company*, No. 507, October Term 1913, is submitted herewith as a part of this petition and for identification, marked Exhibit "A," together with like copy of the brief filed by the Uncle Sam Oil Company in the Supreme Court of the United States in that case on October 7, 1913, which is likewise submitted herewith as a further part of this petition for rehearing and for identification, marked Exhibit "B."

A photo copy of the brief for the United States in the *Pipe Line Cases*, (including the *Uncle Sam Case* No. 507, October Term 1913) is likewise submitted herewith as a further part of this petition for rehearing, and for identification marked Exhibit "C".

A photo copy of the brief for the Interstate Commerce Commission in the *Pipe Line Cases*, (including the *Uncle*

Sam Case No. 507, October Term 1913) is likewise submitted herewith as a further part of this petition for rehearing, and for identification marked Exhibit "D".

From an examination thereof, it will be obvious that the argument made by the respective counsel for the United States and the Interstate Commerce Commission, as well as the conclusion of the majority of this court, employed in an effort to distinguish in principle, the Champlin operations, from the operations of the Uncle Sam Company, are wholly unsupported and unfounded and particularly as to its *use* of the products transported by that company.

II

The effort to distinguish the operations of the Uncle Sam Oil Company in the first paragraph at the top of page 5 of Judge Chandler's typewritten memoranda, by the statement, that the Champlin Company,

> "is transporting oil products *to market for sale to the public* and thus is engaged in transportation in commerce within the meaning of the Act,"

is wholly unsupported by authority and, in fact, falls far short of a correct statement of the law with relation to

> [fol. 748] "interstate transportation * * * as a common carrier for hire."

The Uncle Sam Company was transporting crude oil to its refinery for the manufacture of crude oil products, and the subsequent *sale thereof to the public*. Of that there cannot now be any doubt, as so clearly pointed out by Chief Justice White (562) in his concurring opinion in the *Pipe Line Cases*.

The test, however, is not one of *sale to the public*, but solely one of

> "interstate transportation * * * as a common carrier for hire."

The Champlin Company does not carry anything for the public, for hire, or otherwise. It carries its products for its own account, to a storage tank in Nebraska to another in Kansas and to a third in Iowa, from which storage tanks it there makes sales to the public. *Incidentally, there is not a word of testimony in the record to support the clearly*

drawn inference in the paragraph of the opinion being considered, as to the possibility that a sale or sales may have been made at Enid for delivery through the pipe line.

Neither is the undeviating practice of selling products to the public from the storage tanks only, *technical*, as to the time of transfer of title.

It is a well-recognized method of placing products on the market at a competitive price at the point of delivery.

In *Atlantic Coast Line* v. *Standard Oil Co. of Ky.*, 275 U. S. 257, 72 L. ed. 270, the plaintiff, Standard Oil Company of Kentucky, maintained oil storage tanks in Florida, for the storage of refined products purchased from others which products were carried to the tanks or tank cars by tank steamers. From the storage tanks the plaintiff distributed to the trade its products primarily by means of tank trucks and tank cars. The Railroad Company contended that the [fol. 749] movement over its lines was an interstate movement and that interstate rates, which were higher than the intrastate rates, should apply. The plaintiff contended that such movement of products came to rest when delivered into the storage tanks and that when further shipment was made from them over the lines of the railroad, it was intrastate. On page 267, the court said:

> "It seems very clear to us on a broad view of the facts that the interstate or foreign commerce in all this oil ends upon its delivery to the plaintiff into the storage tanks or the storage tank cars at the seaboard, and that from there its distribution to storage tanks, tank cars, bulk station and drive-in stations, or directly by tank wagon to customers, is all intrastate commerce. This distribution is the whole business of the plaintiff in Florida. There is no destination intended and arranged for with the ship carriers in Florida at any point beyond the deliveries from the vessels to the storage tanks or tank cars of the plaintiff. *There is no designation of any particular oil for any particular place within Florida beyond the storage receptacles or storage tank cars into which the oil is first delivered by the ships. The title to the oil in bulk passes to the plaintiff as it is thus delivered.*" (Italics ours.)

In *General Oil Co.* v. *Crain*, 209 U. S. 211, 52 Law Ed. 754, the question was: whether the shipment of "coal oil"

in tank cars from its wells and refining plants in Pennsylvania and Ohio to a point in Tennessee (Memphis) where the product is barreled for further shipment to customers in Louisiana and other southwestern states, was an interstate shipment from the well and refinery in Pennsylvania to the customer in Louisiana, or did such removal of such "coal oil" from such tank car at Memphis terminate such shipment so as to make such product taxable by the State of Tennessee?

The Supreme Court held that such transportation did there terminate and was taxable.

[fol. 750] Does a different rule apply to shipment of oil, where the transportation agency is a private pipe line, rather than railroad tank cars? We think not. Is there any doubt, in view of these decisions, of the right of the State of Nebraska to tax our products in storage at Superior, or of the State of Kansas to do so at Hutchinson, or of the State of Iowa to do so at Rock Rapids? If these states can so tax such products, then certainly the Interstate Commerce Commission may not regulate their sale thereafter.

The Standard Oil Company of Kentucky, in the *Atlantic Coast Line* case, *supra*, was certainly

> "transporting oil products to market for sale to the public,"

as was the General Oil Company in the *Crain* case, *supra*, and the decisions of the Supreme Court of the United States in those cases completely destroy the conclusion, as well as the reasoning, upon which Judge Chandler erroneously holds the Champlin Company in the employment of its storage tanks for sale of its products to the public, to be engaged in

> "interstate transportation * * * as a common carrier for hire."

Assuming, as stated by Judge Chandler, but not admitting, that the operation is in *commerce;* it certainly is not in "interstate transportation * * * as a common carrier for hire," within the provisions of the Interstate Commerce Act.

The products of the Standard Oil Company of Kentucky in the *Atlantic Coast Line* case, *supra*, of the General Oil

Company in the *Crain* case, *supra*, and of the Champlin Refining Company in this case, all come to rest for sale to the public, when placed in storage tanks at the end of their respective journeys and from there, as so well said by Mr. Chief Justice Taft in the *Atlantic Coast Line* case opinion, *supra*, their

> [fol. 751] "distribution to storage tanks, tank cars, bulk stations and drive-in stations, or directly by tank wagons to customers, is all *intra* state commerce."

This authority should be conclusive of the law in this case and a careful consideration thereof would seem to require a rehearing upon the manifest and fundamental error of Judge Chandler's conclusion that,

> "transporting oil products to market for sale to the public,"

brings one so engaged, within the provisions of the Interstate Commerce Act defining the operations of

> "interstate transportation * * * as a common carrier for hire."

There is grievous and fundamental error in the opinion in this basic and all-important respect.

III

Further error and misconception is found in the same paragraph (top of page 5) of the typewritten memoranda opinion in the discussion of the "differential" charge, followed by the resultant conclusion, viz:

> "In either instance the public pays the *transportation* charge;"

and in the next paragraph will be found the equally erroneous conclusion that,

> "the effect on the public is the same as if title passed to the purchaser at the refinery."

In the first place, the "differential" is not a *transportation* charge within the meaning of the Interstate Commerce Act, any more than the cost of transportation in making up the sale price of the product of the Standard Oil

Company involved in the *Atlantic Coast Line* case, *supra*, and the product of the General Oil Company in the *Crain* case, *supra*, was a transportation charge to the purchaser of such like products.

[fol. 752] When the products of Standard Oil Company involved in the *Atlantic Coast Line* case, *supra*, and the products of General Oil Company involved in the *Crain* case, *supra*, were sold out of the storage tanks into which such products had come to rest, the sales were an intrastate transaction, and whatever amount, if any, may have been added to the cost of such products in the storage tanks from which they were sold, cannot be looked upon, under those decisions, as a transportation charge or as making the sale a part of the interstate commerce by which the products were brought to the storage tanks.

Upon the question of the Champlin Company's right to competitively price its products at Hutchinson, Superior and Rock Rapids, to include a cost equal to that entailed by its competitors in getting their products to such market places, without thereby making a transportation charge against the purchaser or converting itself into the status of a "common carrier for hire," engaged in "transportation in interstate commerce," we also direct the court's attention to the recent opinion in *Interstate Commerce Commission* v. *Tank Car Oil Corporation*, No. 2721 of District Judge Russell, for the Northern District of Georgia, (not yet published) a copy of which opinion is submitted herewith and made a part of this petition for rehearing, being identified as Exhibit "E". We quote from the opinion as follows:

> "* * * As to the law, before the complainant is entitled to the injunctive relief sought, it is necessary for it to convince this court that the operations of the defendant was 'transportation for compensation as a common or a contract carrier,' as held by the Interstate Commerce Commission in T. J. McBroom Contract Carrier Application 29370, 1 M. C. C. 425. This appears to be an excellent statement of the test. Thus, not that the transportation might *result in compensation as a matter of profits to the seller or transporter, but that the effect of the transaction is compensation* [fol. 753] *as a common or contract carrier.* In the *Stickle* case the court found transportation for such

compensation. In the present case, while the court finds that the transportation resulted in profit to the defendant, that is, that it was necessary to transport in order to earn the profit, nevertheless I am unable to find, under the evidence, that there was involved in the transportation any idea of freight or carrier charges. Under the undisputed and uncontradicted evidence, it made no difference where the shipment originated, the cost to the purchaser was the same. *I do not believe that the facts that profit, or compensation, may accrue as a result of transportation is a sufficient test, for if that be so, one who lost money as a result of deliveries for fixed freight charges would not be a carrier.* The real question in any case to be determined is, looking beyond the form of the transaction and to its circumstances, *whether the transportation is for compensation as a common or contract carrier,* or whether *such transportation is incidental to the operation of a commercial enterprise.* In this connection, I find nothing in the statute which prohibits the *conduct of a bona fide wholesale business even if transportation is usually and even exclusively employed as a means of its conduct, provided the operation does not in fact place the operator within the classification of a common or contract carrier.* Thus the fact that the defendant used no storage tanks, in itself does not subject it to the provisions of the statute.

"It is true that ownership of the goods transported is not the sole test whether one is a private carrier or otherwise. However, where bona fide ownership is shown, that fact is, under the definition of private carrier contained in the statute, entitled to considerable weight. *And where bona fide ownership is shown, together with a failure to prove transportation for compensation as a common or a contract carrier, no proper basis exists for classification as a common or contract carrier. Indeed, this does not appear to be seriously questioned by the complainant, its contention is that the profit on the f.o.b. sales of the gasoline is the substantial equivalent of transportation charges between* [fol. 754] *the points involved in the eleven transactions proved in detail, and that this, together with the evidence that the defendant always had an order before he purchased to fill it, shows that in essence the trans-*

> *action was a subterfuge to evade the requirements of the statute.* In view of the testimony from the complainant's witnesses that they purchased gasoline f.o.b. their stations, and neither knew nor cared from whence it came, and the testimony in behalf of the defendant that the prices charged were *based upon competitive conditions in the respective localities*, the inference sought to be drawn by the complainant is not entitled to the weight claimed for it. This is not a case *where the business relates solely to transportation and wholesale sales.* It is shown by the evidence that more than half of the gasoline transported by the defendant was delivered to its retail stations and there sold. As to this portion of the business it is conceded by the complainant that the operations were those of a private carrier. Under the facts here I can find no substantial difference between such transportation for sale at retail and the transportation for sale at wholesale, and accordingly conclude that the complainant has failed to show that in its wholesale operations the defendant is either a common or a contract carrier.
>
> "* * * * * * * "

The reasoning of the opinion is sound and its applicability here is quite evident.

Secondly, there is grave error in Judge Chandler's conclusion that because,

> "the effect on the public is the same as if title passed at the refinery"

the operation is within the regulatory provisions of the Interstate Commerce Act.

The conclusion is erroneous because the premise is unsound. The "effect on the public" could not be "the same as if title passed at the refinery," unless the competitive price continuously dictated a differential equal to the rail [fol. 755] rate cost of transportation to destination; and the evidence shows that such could not be the case.

Furthermore, the purchaser, in the event the sale was made and the title passed at the refinery, would not have the advantage of storage facilities at destination, and would be compelled to assume all risks of transportation not caused by the negligence of the carrier of his selection.

Congress did not intend that the courts should legislatively read into enactments regulating "transportation in interstate commerce" by a "common carrier for hire;" provisions and requirements that are neither there, nor intended to be there.

Mr. Justice Cardozo recognized the force of that principle of judicial interpretation in *Pennsylvania R. R.* v. *Public Utilities, etc.*, 298 U. S. 170, 80 Law Ed. 1130, wherein he said:

> "If the concept of transportation is in need of expansion, it is for the legislative department of the government to determine how great the change shall be."

His further statement, in the same case, is quite important here, *viz:*

> "• • • Appellants would have us hold that this interstate transportation by an owner who does not carry for anyone else will be tacked to the intrastate transportation by railroads who are in business as common carriers, and the movement thus consolidated brought within the statute. The statute and the decisions as we read them forbid this unifying process. *Pipe Line Cases (United States* v. *Ohio Oil Co.)* 234 U. S. 548, 562, 58 L. ed. 1459, 1471, 34 S. Ct. 956; *McCluskey* v. *Marysville & N. R. Co.*, 243 U. S. 36, 39, 40, 61 L. ed. 578, 580, 37 S. Ct. 374; *Atlantic Coast Line R. Co.* v. *Standard Oil Co.*, 275 U. S. 257, 72 L. ed. 270, 48 S. Ct. 107; *Campbell River Mills Co.* v. *Chicago, M. & St. P. R. Co.*, (D. C.) 42 F. (2d) 775, 777, 778, affirmed in [fol. 756] (C. C. A. 9th) 53 F. (2d) 69, 72, 73; *Pennsylvania R. Co.* v. *McGirr's Sons Co.*, (C. C. A. 2d) 287 F. 334.
>
> "• • • • • • • "

and finally, for the avoidance of confusion, his admonition in that case, that,

> "Not all commerce is transportation, and not all transportation is by common carriers by rail."

requires the most careful consideration in this case.

The admission which Judge Chandler says (3rd paragraph, page 5, typewritten copy of memoranda opinion) was made by the Valvoline Company in its case, *viz:*

> "that after such preparation, the transportation would be in commerce,"

is not binding upon the Champlin Company, nor is such admission of any probative force or effect in this case, nor does it by its terms measure responsibility. Furthermore, the products manufactured by the Valvoline Company were delivered to purchasers in cans, or other containers, and never by pipe line.

In complete refutation of Judge Chandler's conclusion in this respect, we need only quote Mr. Justice Reed in the *Valvoline* case, *supra*, upon the ultimate use of the product by the owner. He said: (145)

> "Whether the oil so owned and transported was ultimately used by the carrier in its own operations or *sold to others*, was, in this connection, immaterial."

The connection to which he was referring (to use his language) was, (144)

> "The practice of compelling producers to sell at the well before admitting their oil to the lines was widely used as a means of monopolizing the product before the Hepburn Amendment in (June 29) 1906."

This observation clearly disclaims the applicability of the statute to an operation such as the use of a private pipe line as a marketing agency for refined crude oil products. [fol. 757] It is also proper in this connection to observe that,

> "the effect on the public," (paragraph 2, page 5, typewritten memoranda)

does not determine the status of the Champlin private pipe line *operation*, any more than does the transportation of furniture by truck, or otherwise, by the Sears Roebuck Company, from its Chicago warehouse to its Enid store, for sale to the public, as in neither instance is such business or transportation vested with a public interest.

In *Williams* v. *Standard Oil Company of Louisiana*, 278 U. S. 239, 73 L. ed. 287, it was held that the oil business is not vested with such interest in the public as Judge Chandler seems to think exists and upon which he basi-ly founds his opinion in this case.

In the *Williams* case, *supra*, it was held, that:

> "In order to be affected with a public interest so as to be subject to public regulation, a business or property must be such, or be so employed, as to justify the conclusion that it has been devoted to a public use, and its use thereby in effect granted to the public."

It will surely not be seriously considered, in view of its constant vigilance otherwise, that the Champlin Company has so dedicated its private products pipe line.

A rehearing should be granted, for obviously Judge Chandler's opinion is founded upon the erroneous conclusion that the "public's interest" in the Champlin products pipe line, justifies its conversion by the fiat of the Interstate Commerce Commission into a "common carrier for hire."

The "future" pipe lines referred to by Mr. Justice Holmes in the *Pipe Line Cases, supra*, opinion, are identified by such as are in the future to become "common carriers" in *substance*, if not in *form*.

The later application of the principles of that decision to the Valvoline Company, is illustrative of what Mr. Justice [fol. 758] Holmes had in mind. He did not say, nor intend to say, that one not a common carrier in *fact* could be held to be a common carrier within the Act.

In fact, he carefully stated that those who were common carriers in *substance* (which means in fact) must become so in *form*.

The Champlin Company is not a common carrier in *substance* for hire, or otherwise, and is not engaged in transportation in interstate commerce, as we have pointed out, *supra*. The difficulties encountered by the major companies in the *Pipe Line Cases, supra*, did not arise as a result of what they did with the oil after it had been purchased, as Mr. Justice Reed so aptly observed in the *Valvoline* case, but came about solely as the result of the application of monopolistic practices in obtaining title to and ownership in the oil in the first place.

The Senate Committee reports plainly reveal the evils aimed at by the Hepburn Amendment.

The operation here is not by any stretch of the imagination within those evils or within any definition of monopolistic practices. Furthermore, the regulation of privately owned and operated products pipe lines was not, as is

plainly shown by the history of the times, in contemplation by Congress in the passing of the Hepburn Amendment.

In *United States* v. *Union Pacific R. R. Co.*, 91 U. S. 72, 23 L. ed. 228, the Supreme Court said:

> "But courts may, with propriety, in construing a statute, recur to the history of the times when it was passed; and this is frequently necessary, in order to ascertain the reason as well as the meaning of particular provisions in it."

It has also been said by the Interstate Commerce Commission in *Petroleum Rail Shippers Ass'n* v. *Alton & South-* [fol. 759] *ern Railway*, 243 I. C. C. 589, No. 28106, decided March 11, 1941, that:

> "Prior to the perfection of the process of electric welding, pipe line transportation was practically confined to the crude oil. That process has made possible the transportation of refined petroleum without loss by reason of imperfect pipe joints; and as a result, since 1931 there has been a rapid growth of gasoline pipe lines."

Construing the Hepburn Amendment to the Interstate Commerce Commission Act in the light of the history of the times of its enactment, we must bear in mind that when the Hepburn Amendment was enacted, there were no petroleum products pipe lines. Furthermore, there is no problem now in their operation, such as brought about the Hepburn Amendment. It was not until about 1930 when the art of building welded steel pipe lines was perfected, that it became practicable to use such pipe lines for the transportation of refined petroleum products.

It, therefore, seems quite obvious, in view of the text of the reports of the Senate debate upon the legislation being considered, that Congress was not seeking to regulate the transportation in interstate commerce of refined petroleum products from a refinery to storage facilities at market points. Such activity being then unknown could not have been in contemplation.

The crude oil used in manufacturing products for transportation in the Champlin line, admittedly have been purged of the taint and evils concerning which the Senate

debated and upon which Congress legislated, and the Supreme Court in the *Pipe Line Cases, supra*, considered.

IV

These considerations bring us to the two paragraphs (paragraphs 4, page 6, and paragraph 2, page 7, of the type-[fol. 760] written memoranda) which the petitioner says unequivocally overrule the Supreme Court of the United States in the *Uncle Sam* case, as well as in the *Valvoline* case.

The first paragraph referred to reads as follows:

> "In our opinion, the plain meaning of the Act as amended is that its provisions apply to *all engaged in the interstate transportation of oil or other commodities, except water and except natural or artificial gas by pipe line.*" (Emphasis by the court.)

The second paragraph also referred to reads as follows:

> "In the *Valvoline Oil Company* case, the court held that the provision in the 1920 amendment that the Act applied to 'all pipe line companies' did not narrow the coverage of the Act. *We think this change in verbiage was made for the purpose of making it clear, if any doubt was created by the Uncle Sam Oil Company decision, that all future pipe lines engaged in the interstate transportation of oil or other commodities, except water and natural or artificial gas, were covered by its terms.*" (Emphasis by the court.)

Brief disposition may be made of the conclusion expressed in the first quoted paragraph.

If the paragraph as quoted had been the law at the time of the *Uncle Sam* decision, the exception which was there granted could not have been granted that company.

No one will question the accuracy of that statement. So that, if the opinion of this court is to stand, it must rest upon a change in the law since the *Uncle Sam* decision, and unless a change has been made in the law by the Hepburn Amendment, this opinion overrules the opinion of Mr. Justice Holmes in the *Uncle Sam Company* case, which we say this court may not, with propriety, undertake to do.

We are now brought to a consideration of the second quoted paragraph of this court's opinion, *supra*, in which

it is said in substance that there has been a change in the [fol. 761] law to meet what is necessarily thereby viewed by this court as an emergency created by the *Uncle Sam* decision.

This quite unusual conclusion upon the part of this court, also specifically and unequivocally overrules the opinion of Mr. Justice Reed in the *Valvoline* case, *supra*, who while recognizing the soundness of the exception, granted the Uncle Sam Company in the *Pipe Line Cases, supra*, took occasion to carefully point out that while

> (145) "In the present Act there is a change of language, * * * we perceive none in meaning."

It is important to note, as we shall more fully point out in the brief supporting this petition, that the United States and the Interstate Commerce Commission were then in accord with the quoted finding by Mr. Justice Reed. In their brief in the Supreme Court of the United States in the *Valvoline* case, at page 13, they said:

> "While the applicable sections of the Act have been amended in *minor details since* that decision (the *Pipe Line Cases*) the amendment simply clarifies the language of the statute and *does not make any important change* in policy." (Italics ours.)

At page 23 of the same brief, it is also said:

> "* * * * * * * * *
>
> "There is no merit in Valvoline's argument that the Transportation Act of 1920 (41 Stat. 456) so revised the language of Section 1 as to narrow its scope; the section as it now stands is even more clearly applicable to Valvoline than it was prior to its revision. The purpose of the revision was obviously only simplification of language; there was no intent to reverse the legislative policy of more than a decade. The bill which became the Transportation Act of 1920 was reported to the House and Senate by their conferees with the following comment on the section embodying the revision:
>
> 'Section 400 amends the first five paragraphs of Section 1 of the Commerce Act, making minor

> [fol. 762] corrections and classifying language in several respects, but making no important change in policy. (Report No. 456, Nov. 10, 1919, to accompany H. R. 10453, 66th Cong., 1st Sess.)'."

Quite evidently there is a change of position now being urged for the purpose of again attempting to secure a rule of construction, which the Supreme Court was unwilling to grant in the *Valvoline* case.

A true copy of the brief of the United States and the Interstate Commerce Commission filed in the Supreme Court of the United States in the *Valvoline* case, is submitted herewith as a part of this petition, and for identification marked Exhibit "F"; together with like copy of Valvoline's brief in the Supreme Court of the United States, which is likewise submitted herewith as a further part of this petition for rehearing, and for identification marked Exhibit "G."

The facts with regard to the purpose of the 1920 Amendment remain now as they were then.

May it be anticipated that the Supreme Court will accept an interpretation by this Court, which is contrary to its interpretation placed upon the 1920 Amendment, in the *Valvoline* case, which was founded upon factual statements then made by the Government, which are now brazenly repudiated?

We think not.

Upon the issue as to whether the Valvoline interstate pipe line was a "statutory" common carrier, the Government submitted to the Supreme Court, the affirmative of such contention at page 21 of its brief, as follows:

> The fact that Valvoline is a pipe line company, is determinative of the fact that it is a common carrier within the meaning of the Act; Section 1 (3) expressly directs that the term 'common carrier . . . shall include all pipe line companies'."

This court has so held unequivocally. The Supreme Court very definitely refused to so hold.

We quote from that decision in support of this statement, as follows:

. . . . . .

"There is no controversy over whether appellant is an interstate pipe line company. Obviously it is. The contentions above are advanced to show it is not subject to the Act. Section 1(3) defines common carrier to [fol. 763] include 'all pipe-line companies.' If this definition is not limited by the subsequent clause 'engaged * * * as common carriers for hire,' extended consideration of these characteristics of a private carrier is unnecessary as the language of the definition is decisive.

"* * * * * * *"

The decision against Valvoline was then entered upon the authority of the application of the principles controlling the monopolistic practices employed in the *Pipe Line Cases* and certainly not upon any conclusion that, regardless of use, interstate pipe lines, as such, were "common carriers" within the 1920 Amendment.

The opinion of this court amounts to a disapproval of the decisions of the Supreme Court,

(*a*) in granting an exception to the Uncle Sam Company in the *Pipe Line Cases*, which is controlling here;

and,

(*b*) for the refusal of this court to follow the decision in the *Valvoline* case, denying the Government's contention there, that an interstate pipe line is a "statutory" common carrier;

and a rehearing should, therefore, be granted petitioner in order that a judgment may be entered in its favor in accordance with the decisions of the Supreme Court in the *Pipe Line* and *Valvoline* cases, as aforesaid.

V

Reference is made in the concluding paragraph of the opinion, as to the charter of the Champlin Company. That charter does not authorize it to operate as a common carrier for hire, in interstate transportation. Its right to transport crude oil is obviously intended to solely cover the private hauling of its own products, which it has been careful to do. It is a producer, refiner and marketer of crude oil,

[fol. 764] but never a *carrier* under any definition that has been written of the status of that relationship.

The reference (paragraph 4, page 7, opinion) to the Valvoline charter and its transportation of oil to its two refineries, is quite foreign to the question.

The operations of the Valvoline Company in question, were but a replication upon a smaller scale, of the operations of the major companies which were condemned in the *Pipe Line Cases, supra*, and upon that basis alone, it was held to be within the terms of the Act. Nothing can be more certain than that statement.

There is no resemblance in any respect between Valvoline's operations in the purchase of crude oil from some 9,000 small producers in the Pennsylvania, Ohio and West Virginia area, who had no other outlet and who were required to sell before receiving pipe line clearance, and the operations of the Champlin Company in hauling, at its expense, its manufactured products to distant storage tanks for sale at such points upon competitive prices wholly fixed by others.

The petitioner, therefore, respectfully asks that it be granted a rehearing thereon and renews the prayer of its complaint in all respects.

Champlin Refining Company, Petitioner, by Harry O. Glasser, Dan Moody, Counsel.

[File endorsement omitted.]